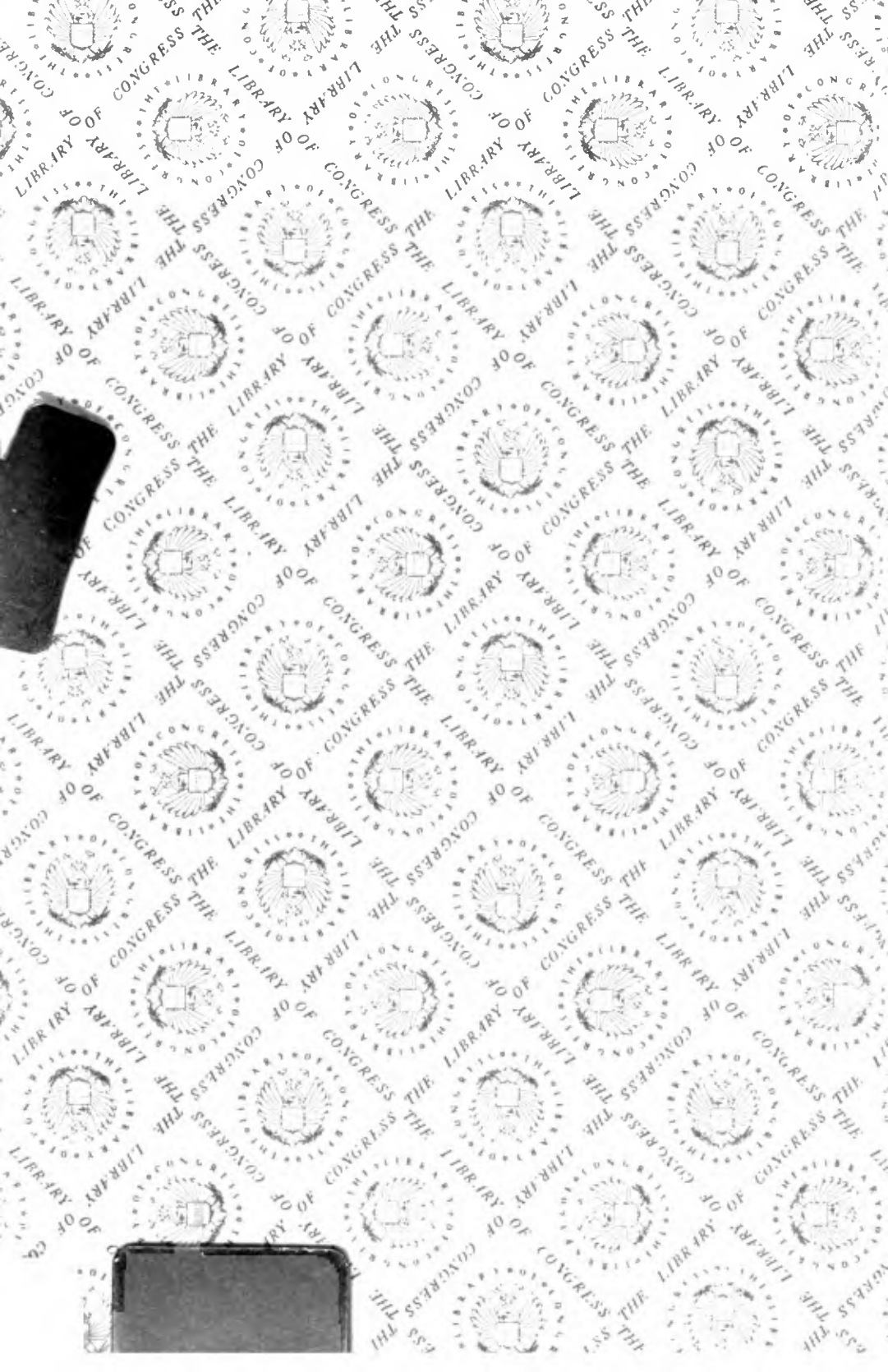
LIBRARY OF CONGRESS THE

INTERNAL SECURITY LEGISLATION

HEARINGS

BEFORE

SUBCOMMITTEE NO. 1

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS

SECOND SESSION

ON

H. R. 226, H. R. 3398, H. R. 5941, H. R. 6877, H. R. 6943, H. R. 7337, H. R. 7405, H. R. 7894, H. R. 7980, H. R. 8326, H. R. 8363, H. R. 8483, H. R. 8489, H. R. 8912, H. R. 8948, H. R. 8749, H. R. 9021, H. R. 9023, H. J. Res. 527, H. J. Res. 528, H. R. 9502, H. R. 9663

MARCH 18, APRIL 5, 7, 8, 12, JUNE 2, 9, 23, 25, 30, 1954

Printed for the use of the Committee on the Judiciary

Serial No. 14

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1954

46150

COMMITTEE ON THE JUDICIARY

CHAUNCEY W. REED, Illinois, *Chairman*

LOUIS E. GRAHAM, Pennsylvania
KENNETH B. KEATING, New York
WILLIAM M. McCULLOCH, Ohio
EDGAR A. JONAS, Illinois
RUTH THOMPSON, Michigan
PATRICK J. HILLINGS, California
SHEPARD J. CRUMPACKER, Jr., Indiana
WILLIAM E. MILLER, New York
DEAN P. TAYLOR, New York
USHER L. BURDICK, North Dakota
GEORGE MEADER, Michigan
LAURENCE CURTIS, Massachusetts
JOHN M. ROBSION, Ja., Kentucky
DEWITT S. HYDE, Maryland
RICHARD H. POFF, Virginia

EMANUEL CELLER, New York
FRANCIS E. WALTER, Pennsylvania
THOMAS J. LANE, Massachusetts
MICHAEL A. FEIGHAN, Ohio
FRANK L. CHELF, Kentucky
J. FRANK WILSON, Texas
EDWIN E. WILLIS, Louisiana
JAMES B. FRAZIER, Jr., Tennessee
PETER W. RODINO, Jr., New Jersey
WOODROW W. JONES, North Carolina
E. L. FORRESTER, Georgia
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
SIDNEY A. FINE, New York

BESSIE M. ORCUTT, *Chief Clerk*
VELMA SMEDLEY, *Assistant Chief Clerk*
WILLIAM R. FOLEY, *Committee Counsel*
MALCOLM MECARTNEY, *Committee Counsel*
WALTER M. BESTERMAN, *Legislative Assistant*
WALTER R. LEE, *Legislative Assistant*
CHARLES J. ZINN, *Law Revision Counsel*

SUBCOMMITTEE NO. 1

LOUIS E. GRAHAM, Pennsylvania, *Chairman*

RUTH THOMPSON, Michigan
DEWITT S. HYDE, Maryland

EMANUEL CELLER, New York
FRANCIS E. WALTER, Pennsylvania
MICHAEL A. FEIGHAN, Ohio [1]

WALTER M. BESTERMAN, *Legislative Assistant*
WILLIAM R. FOLEY, *Counsel*
WILLIAM P. SHATTUCK, *Assistant Counsel*

[1] Serving temporarily on Subcommittee No. 1.

CONTENTS

APRIL 12, 1954

JUNE 2, 1954

JUNE 9, 1954

JUNE 23, 1954

JUNE 25, 1954

JUNE 30, 1954

INTERNAL SECURITY LEGISLATION

THURSDAY, MARCH 18, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10 a. m. in room 346, Old House Office Building, the Honorable Louis E. Graham (chairman of the subcommittee) presiding.

Present: The Honorable Messrs. Graham, Celler, Walter, and Hyde; and the Honorable Ruth Thompson.

Also present: Walter M. Besterman, legislative assistant, and William R. Foley, committee counsel.

Mr. GRAHAM. The subcommittee will come to order.

The subcommittee has before it for consideration a series of bills, H. R. 5941, H. R. 226, H. R. 3398, H. R. 5941, H. R. 6877, H. R. 6943, H. R. 7337, H. R. 7405, H. R. 7894, H. R. 7980, H. R. 8326, and H. R. 8363 all seeking to take action against the Communist Party.

(The several bills are as follows:)

[H. R. 226, 83d Cong., 1st sess.]

A BILL To provide for the detention and prosecution of Communists and former Communists, to provide that peacetime espionage may be punished by death, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares—

(1) that there exists a world Communist movement whose purpose it is, by armed aggression or threatened armed aggression from without, or by force or violence or any other means from within (including such means as terrorism, sabotage, espionage, infiltration, treachery, and deceit), to weaken and ultimately to overthrow and destroy all governments in the world which are not subservient to the foreign power which directs and controls the world Communist movement; and

(2) that the Communist Party of the United States is an integral part of the world Communist movement, with each member of such party, and each participant in such world Communist movement, an agent who is available to the directing and controlling foreign power for its program of world-wide conquest and subjugation; and

(3) that many of the former members of the Communist Party of the United States, and many of the former participants in the world Communist movement, have ceased to be members thereof, or admitted participants therein, solely for the purpose of expediency and to increase their value in carrying out the world Communist movement; and

(4) that Communists and former Communists have abused the bail privileges granted them in Federal courts and, while released on bail, have continued to carry on activities which violate the laws of the United States; and

(5) that the world Communist movement constitutes a clear and present danger to the Government of the United States, and to the governments of the several States, and that the enactment of this legislation is therefore necessary

in order to preserve the sovereignty of the United States as an independent, self-governing Nation and to guarantee to each State a republican form of government.

SEC. 2. The Attorney General of the United States is hereby authorized and directed to commence criminal proceedings against all persons whom he has reason to believe are, or have been, members of the Communist Party of the United States or participants in the world Communist movement when he has reason to believe such persons have committed any offense punishable by any law of the United States.

SEC. 3. Rule 46 (a) of the Federal Rules of Criminal Procedure is hereby amended to read as follows:

"(a) Right to Bail.

"(1) Before Conviction.—A person arrested for an offense shall be admitted to bail if the offense is not punishable by death, and if the offense (A) is not punishable under sections 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 2390 of title 18 of the United States Code; (B) is not punishable under section 4, 21, 112, 113, or 114 of the Internal Security Act of 1950; and (C) is not an offense for which a penalty is prescribed by section 15 of the Internal Security Act of 1950. A person arrested for an offense who is not entitled to bail under the preceding sentence may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

"(2) Upon Review.—Bail may be allowed pending appeal or certiorari only if the offense (A) is not punishable under section 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 2390 of title 18 of the United States Code; (B) is not punishable under section 4, 21, 112, 113, or 114 of the Internal Security Act of 1950; and (C) is not an offense for which a penalty is prescribed by section 15 of the Internal Security Act of 1950, and only if it appears that the case involves a substantial question which should be determined by the appellate court. Bail may be allowed by the trial judge or by the appellate court or by any judge thereof or by the circuit justice. The court or the judge or justice allowing bail may at any time revoke the order admitting the defendant to bail."

SEC. 4. In the case of any offense punishable under section 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 2390 or title 18 of the United States Code, if the period of limitation therefor would, except for this section, expire within the two-year period immediately following the date of enactment of this Act, such period of limitation is hereby extended to two years after such date of enactment.

SEC. 5. The last two paragraphs of section 2385 of title 18 of the United States Code are herchy amended to read as follows:

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof; or

"Whoever collaborates with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any government in the United States, whether or not by force or violence—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof for the five years next following his conviction.".

SEC. 6. Section 794 of title 18 of the United States Code is hereby amended to read as follows:

"§ 794. Gathering or Delivering Defense Information To Aid Foreign Goverument

"(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for not more than thirty years.

"(b) Whoever, with intent or reason to believe that it is to be used to the [illegible]ry of the United States or to the advantage of a foreign nation, collects,

records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or national defense materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to any foreign government, shall be punished by death or by imprisonment for not more than thirty years.

"(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.".

SEC. 7. Article 106 of the Uniform Code of Military Justice is hereby amended to read as follows:

"ART. 106. SPIES.

"Any person who is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the Armed Forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the national defense of the United States, or elsewhere, shall be tried by a general court martial or by a military commission and on conviction shall be punished by death."

[H. R. 3398, 83d Cong., 1st sess.]

A BILL To provide for the detention and prosecution of Communists and former Communists, to provide that peacetime espionage may be punished by death, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares—

(1) that there exists a world Communist movement whose purpose it is, by armed aggression or threatened armed aggression from without, or by force or violence or any other means from within (including such means as terrorism, sabotage, espionage, infiltration, treachery, and deceit), to weaken and ultimately to overthrow and destroy all governments in the world which are not subservient to the foreign power which directs and controls the world Communist movement; and

(2) that the Communist Party of the United States is an integral part of the world Communist movement, with each member of such party, and each participant in such world Communist movement, an agent who is available to the directing and controlling foreign power for its program of world-wide conquest and subjugation; and

(3) that many of the former members of the Communist Party of the United States, and many of the former participants in the world Communist movement, have ceased to be members thereof, or admitted participants therein, solely for the purpose of expediency and to increase their value in carrying out the world Communist movement; and

(4) that Communists and former Communists have abused the bail privileges granted them in Federal courts and, while released on bail, have continued to carry on activities which violate the laws of the United States; and

(5) that the world Communist movement constitutes a clear and present danger to the Government of the United States and to the governments of the several States, and the enactment of this legislation is therefore necessary in order to preserve the sovereignty of the United States as an independent, self-governing Nation and to guarantee to each State a republican form of government.

SEC. 2. The Attorney General of the United States is hereby authorized and directed to commence criminal proceedings against all persons whom he has reason to believe are, or have been, members of the Communist Party of the United States or participants in the world Communist movement when he has reason to believe such persons have committed any offense punishable by any law of the United States.

SEC. 3. Rule 46 (a) of the Federal Rules of Criminal Procedure is hereby amended to read as follows:

"(a) Right to Bail.

"(1) Before Conviction.—A person arrested for an offense shall be admitted to bail if the offense is not punishable by death, and if the offense (A) is not

punishable under section 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 2390 of title 18 of the United States Code; (B) is not punishable under section 4, 21, 112, 113, or 114 of the Internal Security Act of 1950; and (C) is not an offense for which a penalty is prescribed by section 15 of the Internal Security Act of 1950. A person arrested for an offense who is not entitled to bail under the preceding sentence may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

"(2) Upon Review.—Bail may be allowed pending appeal or certiorari only if the offense (A) is not punishable under section 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 2390 of title 18 of the United States Code; (B) is not punishable under section 4, 21, 112, 113, or 114 of the Internal Security Act of 1950; and (C) is not an offense for which a penalty is prescribed by section 15 of the Internal Security Act of 1950, and only if it appears that the case involves a substantial question which should be determined by the appellate court. Bail may be allowed by the trial judge or by the appellate court or by any judge thereof or by the circuit justice. The court or the judge or justice allowing bail may at any time revoke the order admitting the defendant to bail".

SEC. 4. In the case of any offense punishable under section 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 2390 of title 18 of the United States Code, if the period of limitation thereof would, except for this section, expire within the two-year period immediately following the date of enactment of this Act, such period of limitation is hereby extended to two years after such date of enactment.

SEC. 5. The last two paragraphs of section 2385 of title 18 of the United States Code are hereby amended to read as follows:

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof; or

"Whoever collaborates with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any government in the United States, whether or not by force or violence—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof for the five years next following his conviction.".

SEC. 6. Section 794 of title 18 of the United States Code is hereby amended to read as follows:

"§ 794. Gathering or Delivering Defense Information to Aid Foreign Government

"(a) Whoever, with intent or reason to believe that it is to be used to the injury, of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for not more than thirty years.

"(b) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or national defense materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertake for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to any foreign government, shall be punished by death or by imprisonment for not more than thirty years.

"(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.".

SEC. 7. Article 106 of the Uniform Code of Military Justice is hereby amended to read as follows:

"ART. 106. SPIES.

"Any person who is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the Armed Forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the national defense of the United States, or elsewhere, shall be tried by a general court martial or by a military commission and on conviction shall be punished by death."

SEC. 8. (a) Section 352 of the Immigration and Nationality Act is amended by adding at the end thereof the following new subsection:

"(c) A person who has become a national by naturalization shall lose his nationality by being convicted of a violation of section 5 (a) (1) (A) or 5 (a) (1) (B) of the Subversive Activities Control Act of 1950 (50 U. S. C., sec. 784 (a) (1) (A), (B))."

(b) Subsection (a) of section 241 of such Act is amended by striking out the word "or" at the end of paragraph (17); by striking out the period at the end of paragraph (18), and inserting in lieu thereof a semicolon and the word "or"; and by adding at the end of such subsection the following new paragraph:

"(19) has lost his nationality under section 352 (c) of this Act.".

[H. R. 5941, 83d Cong., 1st sess.]

A BILL To outlaw the Communist Party and similar subversive organizations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby endorses and reaffirms the findings made in section 2 of the Internal Security Act of 1950, and further finds and declares that any person who knowingly and willfully becomes or remains a member of the Communist Party or any other subversive organization of similar nature may be reasonably presumed to have adopted and undertaken to support the aims and purposes of such organization. It is therefore declared to be the policy of the Congress and the purpose of this Act to protect the United States against un-American activities, organizations, and persons by imposing penalties upon those who knowingly and willfully acquire or retain membership in any such organization.

SEC. 2. Whoever knowingly and willfully becomes or remains a member of the Communist Party, or of any other organization having for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and in addition thereto shall forfeit all rights of citizenship and any right to become a citizen, and shall be ineligible to hold any office of trust or profit under the United States. For the purposes of this section, the term "Communist Party" means the political organization now known as the Communist Party of the United States of America, whether or not any change is hereafter made in such name.

SEC. 3. This Act shall take effect upon the expiration of thirty days after the date of its enactment.

[H. R. 6877, 83d Cong., 2d sess.]

A BILL To make it a crime to belong to the Communist Party or to any other subversive organization

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who knowingly and willfully becomes or remains a member of the Communist Party, or of any other organization having for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence shall be fined not more than $5,000 or imprisoned not more than 10 years, or both. For the purposes of this section, the term "Communist Party" means the organization now known as the Communist Party of the United States of America, whether or not any change is hereafter made in such name.

SEC. 2. For the purposes of prosecutions for violation of the first section, an organization shall be presumed to have for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence if it has been finally determined in a judicial proceeding before the courts of the United States to be—

(1) an organization of the type referred to in the first section of this Act;
(2) a society, group, or assembly of persons of the type referred to in the third paragraph of section 2385 of title 18 of the United States Code; or
(3) an organization which engages in political activity as defined in section 2386 of title 18 of the United States Code.

SEC. 3. This Act shall take effect upon the expiration of thirty days after the date of its enactment.

[H. R. 6943, 83d Cong., 2d sess.]

A BILL To create a commission to study the question of outlawing the Communist Party

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF THE COMMISSION TO STUDY THE QUESTION OF OUTLAWING THE COMMUNIST PARTY

SECTION 1. There is hereby established a bipartisan commission to be known as the "Commission To Study the Question of Outlawing the Communist Party" (in this Act referred to as the "Commission").

MEMBERSHIP OF THE COMMISSION

SEC. 2. (a) The Commission shall be composed of twelve members to be appointed from among outstanding American authorities on jurisprudence and men otherwise outstanding in public life as follows:
(1) Four appointed by the President of the United States;
(2) Four appointed by the President of the Senate; and
(3) Four appointed by the Speaker of the House of Representatives.
(b) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

ORGANIZATION OF THE COMMISSION

SEC. 3. The Commission shall elect a Chairman and a Vice Chairman from among its members.

QUORUM

SEC. 4. Seven members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 5. (a) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.
(b) Each member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any (notwithstanding sec. 6 of the Act of May 10, 1916, as amended (5 U. S. C., sec. 58)), as is necessary to make his aggregate rate of salary $15,000 per year; and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.
(c) Each member of the Commission from private life shall receive $50 per diem while engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of such duties.

STAFF OF THE COMMISSION

SEC. 6. The Commission shall have power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of the civil-service laws and the Classification Act of 1949, as amended.

EXPENSES OF THE COMMISSION

SEC. 7. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

EXPIRATION OF THE COMMISSION

SEC. 8. Ninety days after the submission to the Congress of the report provided for in section 9 (b), the Commission shall cease to exist.

DUTIES OF THE COMMISSION

SEC. 9. (a) The Commission shall study and investigate the menace to our way of life involved in the activities of the Communist Party in the United States, giving special attention to the question whether the Communist Party should be outlawed in the United States. If the Commission concludes that the Communist Party should be outlawed in the United States, the Commission shall study and investigate the methods most appropriate to so outlaw the Communist Party in view of our American traditions of freedom.

(b) Not later than six months after the twelve members of the Commission have been appointed, the Commission shall make a report of its findings and recommendations to the Congress, together with its reasons for the recommendations which it makes.

POWERS OF THE COMMISSION

SEC. 10. (a) The Commission, or any member thereof authorized by the Commission to do so, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such member may deem advisable. Any such member may administer oaths or affirmations to witnesses appearing before the Commission or before such member. Subpenas may be issued under the signature of the Chairman or any member of the Commission designated by the Chairman, and may be served by any person designated by the Chairman or such member.

(b) The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this Act; and each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman or Vice Chairman.

[H. R. 7337, 83d Cong., 2d sess.]

A BILL To outlaw the Communist Party and similar subversive organizations by making it a crime to be a member thereof, to provide for the forfeiture of the citizenship of persons convicted of engaging in certain subversive activities, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any person who becomes or remains a member of the Communist Party, or who becomes or remains a member of any other organization having for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence, with knowledge of such purpose or aim, shall be guilty of a felony and shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and in addition such person shall lose his nationality and forfeit all rights of citizenship (including any right thereafter to become a citizen), shall be incligible for employment by the United States or any department or agency thereof, and shall he ineligible to enter into any contract with the United States or any department or agency thereof.

(b) For the purposes of subsection (a)—

(1) the term "Communist Party" means the organization now known as the Communist Party of the United States of America, whether or not any change is hereafter made in such name; and

(2) an organization shall be conclusively presumed to have for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence if it has been determined by a court of the United States in a judicial proceeding to have any such purpose or aim or to be (A) a society, group, or assembly of

persons of the type referred to in the third paragraph of section 2385 of title 18 of the United States Code, or (B) an organization which engages in political activity as defined in section 2386 of such title.

SEC. 2. Section 349 (a) (9) of the Immigration and Nationality Act (relating to loss of nationality by native-born or naturalized citizen) is amended by inserting immediately after the semicolon at the end thereof the following: "or advocating or conspiring to advocate the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence, or becoming or remaining a member of the Communist Party, or becoming or remaining a member of any other organization having for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence (with knowledge of such purpose or aim), if and when he is so convicted".

SEC. 3. The provisions of this Act shall apply only with respect to offenses committed wholly or partly after the date of the enactment of this Act.

[H. R. 7405, 83d Cong., 2d sess.]

A BILL To outlaw the Communist Party or any organization created to overthrow the Government of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any organization under the name and title of Communist Party which is supporting and furthering the governmental ideologies held and taught by the Union of Soviet Socialist Republics and has for its purpose the overthrow of the Government of the United States of America, will be outlawed and its existence declared illegal under this Act; that the Congress further finds and declares that any person or persons who knowingly and willingly remains a member of the Communist Party or any other subversive organization holding allegiance to the tenets and teaching of the Communist Party, shall be deemed in violation of this Act and subject to the penalties herein set out. The purpose of this Act is to protect the United States against un-American subversive activities by organizations or persons who knowingly and willfully acquire or retain membership in the Communist Party.

Therefore, whoever is convicted, after given every legal opportunity of presenting his or her defense before a duly established United States court, of remaining a member of the Communist Party or any other organization that advocates the overthrow of the United States Government, shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and in addition thereto, shall forfeit all rights of citizenship and any right to become a citizen and shall be ineligible to hold any office of trust under the United States Government.

This Act shall take effect upon the expiration of thirty days after the date of its enactment.

[H. R. 7894, 83d Cong., 2d sess.]

A BILL Declaring the Communist Party and similar revolutionary organizations illegal; making membership in, or participation in the revolutionary activity of, the Communist Party or any other organization furthering the revolutionary conspiracy by force and violence a criminal offense; and providing penalties

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon evidence which has been presented and proof which has been established before the Congress of the United States and the courts of the United States, there exists an international revolutionary Communist conspiracy which is committed to the overthrow by force and violence of the Government of the United States and of the several States, such conspiracy including the Communist Party of the United States, its various components of affiliated, subsidiary, and frontal organizations and the members thereof.

SEC. 2. The Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations and all other organizations, no matter under what name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are hereby declared illegal and not entitled to any

of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party, its various components of affiliated, subsidiary, and frontal organizations and other organizations with the same revolutionary purposes, by reason of the laws of the United States or any political subdivision thereof, are hereby terminated.

SEC. 3. Whoever, therefore, being a member of the Communist Party of the United States or any affiliated, subsidiary, or frontal organization thereof, or any other organization, no matter how named, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force or violence, knowing the revolutionary object or purpose thereof; or whoever participates in the revolutionary activities of the Communist Party or any affiliated subsidiary or frontal organization thereof, or any other organization with the same revolutionary purpose, knowing the revolutionary object or purpose thereof, is guilty of a Federal offense, and, upon conviction thereof, shall be sentenced to imprisonment for not exceeding ten years or fined not exceeding $10,000, or both.

[H. R. 7980, 83d Cong., 2d sess.]

A BILL To amend chapter 115 of title 18, United States Code, relating to treason, sedition, and subversive activities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 115 of title 18, United States Code, is amended by adding at the end thereof the following section:

"§ 2391. Advocating the establishment of totalitarian dictatorship

"Whoever organizes, or assists or attempts to organize, or, knowing the purposes thereof, becomes or is a member of, or affiliates with any society, group, party, organization, or assembly of persons which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism characterized by—

"(A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between the party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit; and

"(B) the forcible suppression of opposition to such party—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, following his conviction."

SEC. 2. The analysis of chapter 115, title 18, United States Code, is amended by adding the following item at the end thereof:

"2391. Advocating the establishment of totalitarian dictatorship."

[H. R. 8326, 83d Cong., 2d sess.]

A BILL Declaring the Communist Party and similar revolutionary organizations illegal; making membership in, or participation in the revolutionary activity of, the Communist Party or any other organization furthering the revolutionary conspiracy by force and violence a criminal offense; and providing penalties

Be it enacted by the Senate and House of Representatives of the United States of America assembled, That upon evidence which has been presented and proof which has been established before the Congress of the United States and the courts of the United States, there exists an international revolutionary Communist conspiracy which is committed to the overthrow by force and violence of the Government of the United States and of the several States, such conspiracy including the Communist Party of the United States, its various components of affiliated subsidiary, and frontal organizations and the members thereof.

SEC. 2. The Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations and all other organizations, no matter under what name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory,

District, or possession thereof, or the government of any political subdivision therein by force and violence, are hereby declared illegal and not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party, its various components of affiliated, subsidiary, and frontal organizations and other organizations with the same revolutionary purposes, by reason of the laws of the United States or any political subdivision thereof, are hereby terminated.

SEC. 3. Whoever, therefore, being a member of the Communist Party of the United States or any affiliated, subsidiary, or frontal organization thereof, or any other organization, no matter how named, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force or violence, knowing the revolutionary object or purpose thereof; or whoever participates in the revolutionary activities of the Communist Party or any affiliated subsidiary or frontal organization thereof, of any other organization with the same revolutionary purpose, knowing the revolutionary object or purpose thereof, is guilty of a Federal offense, and, upon conviction thereof, shall be sentenced to imprisonment for not exceeding ten years or fined not exceeding $10,000, or both.

[H. R. 8363, 83d Cong., 2d sess.]

A BILL To make affiliation with the Communist Party of the United States unlawful

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That affiliation of the Communist Party of the United States with an international Communist conspiracy to overthrow by force and violence the Government of the United States has been established by evidence and proof in the courts and through the investigative procedures of the United States.

SEC. 2. The Communist Party of the United States is hereby declared illegal.

SEC. 3. Any person belonging to the Communist Party of the United States on or after the date on which the President of the United States affixes his signature to this Act is guilty of a Federal offense and, upon conviction thereof, shall be sentenced to imprisonment for not exceeding ten years or fined not exceeding $10,000, or both.

Mr. GRAHAM. Mr. Walter would like to be heard first.

Mr. WALTER. Thank you, Mr. Chairman.

STATEMENT OF HON. FRANCIS E. WALTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. WALTER. Mr. Chairman, I introduced H. R. 7980, which is an amendment to title 18 of the United States Code.

Under the provisions of this bill, acts which are therein defined are made a crime.

I feel that it is utterly impossible to outlaw the Communist Party as such. But I am just as thoroughly convinced that it is possible to define the activities which constitute the membership's objectives as a crime and in that way outlaw the activities of the Communist Party.

For a long while this question has been under discussion and we have refrained from attempting to outlaw the party largely because of the representations of Mr. J. Edgar Hoover. He always contended that to outlaw the party would make it more difficult for him to detect people engaged in the activities of the Communist Party. Recently, however, he said he thought that the Communist Party had been driven underground. If that is the fact, I see no reason why we should not take this next step and make the activities of these people who are engaged in this conspiracy a crime.

Under the Smith Act, it is necessary to prove that the conspiracy to overthrow the Government includes teaching the duty, necessity, desirability, or propriety of overthrowing the Government by force or violence. Indeed, the rank and file of the membership do not teach in the usual sense of the word and it is very difficult to make out a case against them. I should say it would be impossible.

But with the enactment of H. R. 7980 it is not necessary to teach but to organize and to be members of organizations which have as their purpose the overthrow of the Government of the United States by force and violence.

Perhaps, my membership on the Committee on Un-American Activities makes it impossible for me to look at this matter objectively. For months I have been literally nauseated by the testimony of people appearing before that committee who are not true Americans.

Nothing can be done about their activities. They contemptuously hide behind the Constitution which they would destroy; and because the courts have leaned over backward, if you please, to interpret the fifth amendment, it is utterly impossible to get at these people and to force them to divulge those activities which, if we knew about, would enable us to warn the American people.

Recently we had the responsibility of writing the Immigration and Nationality Code. There are organized now in several places in the United States committees set up for the purpose of repealing that act. The Daily Worker recently commented on the presence of large numbers of ministers, clergymen, and professors on these committees. Some of these people, however, willfully or otherwise, are actually aiding and abetting the Communist movement in America. We are powerless to do anything about it. If we subpena them and ask them who enlisted their assistance in this activity, they would refuse to answer on the ground that they are by law exempted from incriminating themselves.

Our Supreme Court, in what I think is a very distorted position, has protected them. We have now come to the time where, unless we act, we will appear ridiculous all over the world.

Why we cannot take the step to protect our own security by this amendment I do not know. The Supreme Court has held that Congress can determine the steps necessary. It is our duty to take the steps to protect America and I believe this step is absolutely essential.

Mr. GRAHAM. You understand, today, we are hearing these bills primarily dealing with the outlawing of the Communist Party. At a later hearing we will take up a bill along the lines of citizenship. Do you see any conflict between your bill and the Smith law?

Mr. WALTER. I think about the time you take that up someone will tell the President you can't take away citizenship from a United States citizen.

Mr. GRAHAM. Do you see any conflict between your bill and the Smith law?

Mr. WALTER. No. It is an amplification of the objectives of the Smith Act which I, frankly, assisted in preparing.

Mr. CELLER. I take it that the Smith Act goes to the point of teaching?

Mr. WALTER. You see, Mr. Celler, under the Smith Act, "Whoever knowingly or willfully abets or advises" is the expression used.

"Abets" is susceptible of many interpretations and while there are no Supreme Court decisions, there are numerous district court decisions which make "abets" almost synonymous with the words preceding it and following it. Those are "aid" and "advises."

Mr. CELLER. I am interested to know how you would approve the words, the "Communist Party."

Mr. WALTER. The name would be changed to something else. What my definition does is to spell out the objectives of the Communist Party without mentioning the name of the party.

Mr. GRAHAM. Mr. Walter, I want to ask you this: Do you differentiate in your definition of Communist Party against that of the ordinary political party?

Mr. WALTER. Yes.

Mr. CELLER. Suppose we said in this connection there is a Communist Party which appears on the ballots in New York State. The Communist Party has candidates who appear officially on the ballots. That would, ipso facto, make your appearance on the ballot a crime.

The name "Communist" of itself would constitute a crime.

Mr. WALTER. Oh, no.

Mr. CELLER. You would have to prove it was organized on a dictatorial basis?

Mr. WALTER. On a totalitarian basis.

Mr. CELLER. And that it conflicted with the policy of the country which exists?

Mr. WALTER. May I say just one thing more? The language here is the language we used in the Immigration and Naturalization Act and it has been passed by the courts so that the advantage of enacting this statute would be to obviate the necessity of waiting on court decisions because we have those decisions in back of us.

Mr. CELLER. Will you explain a little bit more what you mean by "identity between the party and its policies and the governmental policies of the country"?

Mr. WALTER. That again is our method of describing the Communist Party without mentioning the name.

Mr. CELLER. The country in which it exists would be the United States?

Mr. WALTER. Yes.

Mr. CELLER. And then in section 2 you have the following. You had the Smith Act "advocating or establishing"; "establishing a totalitarian regime." You had the "teaching and abetting" or "advocating."

Mr. WALTER. Yes.

Mr. CELLER. How would you give examples of that?

Mr. WALTER. Under the Smith Act the people who were convicted were actively engaged in teaching methods to be employed in order to overthrow the Government of the United States. Under this proposed amendment to the Smith Act we say, membership in the organization would make these people as guilty as those actually teaching. So, in effect, the teacher and pupil would both be guilty.

Mr. CELLER. You would not go to the length of outlawing the Communist Party as such?

Mr. WALTER. I do not see how you can. You cannot outlaw a party more than you can outlaw a chair. It is the activities of the individual that you can outlaw.

Mr. CELLER. Would you say that would be unconstitutional?

Mr. WALTER. No. I do not think it would be unconstitutional, Mr. Celler.

Mr. CELLER. You think you would not want just to outlaw the party because of the reasons you outlined as were expressed by J. Edgar Hoover?

Mr. WALTER. I am accepting the adroitness with which these conspirators meet the existing situation. If you outlaw the party today then tomorrow it might be known as the Dies movement or anything else. So the name would mean nothing.

Mr. CELLER. The name Dies means nothing?

Mr. WALTER. I only said, "for example."

Mr. GRAHAM. You have in mind, of course, the recent bill that Judge Smith had the other day? Do you see anything in terms of that bill and your bill?

Mr. WALTER. No, I do not, Mr. Graham. I do not see any connection whatever. That bill is designed to clarify the intent within the minds of the Congress at the time of the enactment of the Smith Act—and there again the distorted court opinion—if I may criticize the court of last resort of my State—that decision has made it possible for one, Steve Nelson, to avoid prosecution in Pennsylvania.

Mr. GRAHAM. You are supported in your opinion by Judge Musmanno.

Mr. WALTER. And the judge who wrote the opinion on the other side was my first law partner.

Mr. HYDE. Would not the definition in this bill apply to Fascists as well as Communists?

Mr. WALTER. I don't know of any attempt by Mr. Mussolini to overthrow the Government of the United States through internal operations; although the language of my bill is strong enough and broad enough to meet that kind of situation.

Mr. HYDE. What bothers me is, perhaps, you have too broad a space. Mr. Jones, Smith and Brown at Podunk have no connection whatever with the Communist Party, as such and no connection with Russia. And they do not know a Bolshevik from an Indian; and they decide this system of ours is working badly and that people are not ready nor fit for this evil type of government we have in this country and we may have a different setup.

The setup they advocate is one designed along the lines of a single political party organization on a dictatorial basis which party would have an equal affinity with the governmental policy in the country in which it exists and they think it is better. So, they start the organization with a group to promote such a political idea. It has no connection with Russia, Germany, Italy, or anywhere else. So they start to stump the country.

Wouldn't they be in violation of the law?

Mr. WALTER. Yes. If what they did was to take the system of the Communist Party and its doctrines and attempted to translate them into action in this country. They would be guilty. I point out this, that members are not significant at all nor is geography. The three men of Podunk would be just as guilty as if it were originated in Brooklyn and brought to Podunk. That does not make any differ-

ence at all. The fact that there are only three people in a rural community is immaterial.

Mr. CELLER. They would still be in violation of the law?

Mr. WALTER. Yes.

Mr. HYDE. Now, what bothers me, as long as there are no attempts to put that over by force and violence under our system of government, and not our ideals, don't they have as much a right to talk on the street corner and advocate that by constitutional means?

Mr. WALTER. That would not be in violation of the law. If we attempted to do that that would be in violation of the constitution. There is nothing to prevent anyone from organizing any movement to change our system of government so long as it is not through force or violence or revolution.

Mr. HYDE. You don't think so now?

Mr. CELLER. No.

Mr. WALTER. I am sure in this language Mr. Celler means just that.

Mr. CELLER. I am curious about that section of the act. That one indicating the sanction. The first paragraph is—

Whoever advocates, aids, abets, devises or teaches the destroying or overthrowing the Government by force or violence.

And then we have paragraphs 2 and 3.

Now, as your bill reads, I do not think you would have to prove overthrow of government by force or violence.

Mr. WALTER. That is right.

Mr. CELLER. I think because it is spelled out so pertinently in section 2385, the burden of proof is on the Government to prove it is organized to overthrow by force or violence. It may be taken that that was for a judicial tribunal to decide. I wonder if you should not spell that out in your provisos.

Mr. WALTER. The very purpose of this language was to avoid the difficulty we have experienced in convicting these conspirators.

Mr. GRAHAM. As you know, I have had as much experience as you.

Mr. WALTER. As United States district attorney for the western district of Pennsylvania.

Mr. GRAHAM. I think I had the first Communist in the United States. Under our Pennsylvania law we are required to take meticulous care to have our petitions prepared setting forth the names, addresses and so forth placed on the ballots. Now, what I am driving at is this: Going back to the Communist Party, the honesty and good faith and whether founded on the truth or not, and whether that did in itself constitute any evidence of desire to overthrow our Government——

Mr. WALTER. I will answer that by saying that lying and resorting to perjury are the easiest things that Communists do, without hesitation. As a matter of fact, I am sure they are taught that when it serves the purpose it is the thing to do—to lie. That is why I opposed the non-Communist oath in the Taft-Hartley Act. It was meaningless and 80 percent of the people who took the oath had their fingers crossed.

We had an example of that situation in Philadelphia some weeks ago when the Committee on Un-American Activities was investigating the large number of Communists in the school system.

I noticed yesterday that Dr. Hutchins, the former president of the University of Chicago, criticized us for our interference with the edu-

cational system. It is too bad bleeding hearts of that sort criticize. These schoolteachers were Communists up to the minute they were required to take the Pennsylvania loyalty oath. They testified they were not Communists as of 9:30 on a certain day. When they were asked if they were members at 9:30 the next day they refused to answer on the ground that it would tend to incriminate them.

Every one of these people Dr. Hutchins was crying for were card-carrying Communists. Those men charged with child guidance were card-carrying Communists.

To prosecute any one of these people criminally would be a very difficult thing because the chances are you could not find any evidence of teaching the overthrow of the Government by force or violence. But every single one of these people would be found guilty of violating this statute, I hope.

Mr. GRAHAM. You and I both recall the early days when we had the Harry Bridges case and the methods used then behind locked doors, and so on. That was done surreptitiously. You cannot compare that with action behind closed doors.

Mr. WALTER. May I have permission to include with my remarks some communications I have received from the Veterans of Foreign Wars posts and Amvets posts.

Mr. GRAHAM. You may.

(The communications referred to follow:)

PALMERTON MEMORIAL POST, No. 7134,
VETERANS OF FOREIGN WARS,
Palmerton, Pa., May 9, 1954.

Hon. FRANCIS E. WALTER,
House of Representatives, Washington, D. C.

HONORABLE SIR: At a meeting of the Palmerton Memorial Post, No. 7134, Veterans of Foreign Wars, held on Thursday, May 6, 1954, the overseas veterans went on record to outlaw communism and support your bill, H. R. 7980. We also feel as you do that the Communist Party is an international crime syndicate, with headquarters in Moscow.

Enclosed you will find a newspaper clipping pertaining to the said resolution.

Yours in comradeship,

JOSEPH SOBOTA, *Adjutant.*

PALMERTON: VETERANS OF FOREIGN WARS WAGE BATTLE ON COMMUNISM

At a spirited meeting of the Veterans of Foreign Wars conducted last evening in the post home, the members voted unanimously to press for the outlaw of communism in the United States.

Willard Boyer, post commander, and Charles Fabian, president of the home association, noted that in pressing for legislation that will outlaw communism in the United States, the VFW is simply asking Congress to recognize what the courts of our country have decided time and time again—that the so-called Communist Party of the United States is the agent of Soviet Russia and part and parcel of a criminal policy.

The resolution calling for the outlawing of the party follows:

"Here in America, in our eagerness to uphold the right of the individual citizen to belong to the political party of his choice, we have been tragically blind to the truth. In conceding to the Communist Party of the United States all the rights and privileges of a legitimate political organization, we have handed to our enemies their most important weapon of destruction—a weapon far more potent than any hydrogen bomb.

"The overseas veterans feel that in our failure to officially label the Communist Party of the United States for what it actually is—a domestic branch of a criminal conspiracy to conquer all free peoples—we have nourished a vicious scheme that has only one objective. That goal is the dissolution of our form of government in the United States—by peaceful means, if possible, and by violence if necessary."

A letter is being forwarded to Congressman Francis E. Walter, advising him of the above resolution.

ELWOOD MILLER POST 106, AMVETS,
Lehighton, Pa., April 12, 1954.

Hon. FRANCIS E. WALTER,
House Office Building, Washington, D. C.

DEAR "TAD": Enclosed find copy of a letter addressed to the chairman of the Committee on the Judiciary, and urging action on your bill, H. R. 7980.

I note that your correspondence to our post is dated February 24, 1954; however, it has just been brought to my attention this past week, and I immediately brought it before a meeting of the post, and obtained action in favor of support.

I hope that the lateness of this latter to the chairman of the Judiciary Committee will not prevent it from being of some assistance, since we don't like to disappoint our favorite Congressman at any of the few times he asks our assistance, and especially in this instance where we are heartily in accord with the provisions of the bill.

Looking forward to seeing you personally once again, I remain,

Sincerely for AMVETS,

DONALD M. WALTERS, *Adjutant.*

ELWOOD MILLER POST 106, AMVETS,
Lehighton, Pa., April 12, 1954.

CHAIRMAN, COMMITTEE ON THE JUDICIARY,
House of Representatives, Washington, D. C.

GENTLEMEN: We refer to H. R. 7980, a bill introduced by Hon. Francis E. Walter, Representative from the 15th district of Pennsylvania, for the purpose of amending chapter 115 of title 18, United States Code, relating to treason, sedition, and subversive activities.

At a regular meeting of this post, which consists of more than 400 active members, it was unanimously passed that we favor and support the legislation introduced by Representative Walter under H. R. 7980. It was further recommended that we request the Committee on the Judiciary to begin hearings on this bill at the earliest possible date in order that appropriate and favorable action might be taken prior to adjournment of the 83d Congress.

Since every member of our organization bore arms and would have laid down his life to perpetuate the principles and privileges of a free America, we are firmly convinced that each American citizen's freedom ends where the next fellow's freedom begins, and that, therefore, there is no room in our society for either individuals or political parties which advocate establishment in the United States of a totalitarian dictatorship, or any other form of government contrary to that which loyal and brave American soldiers, sailors, airmen, and marines have fought to preserve and maintain.

Your consideration of this request will be deemed a kind favor and action in accordance will be greatly appreciated.

Sincerely for AMVETS,

DONALD M. WALTERS, *Adjutant.*

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
DEPARTMENT OF PENNSYLVANIA,
Harrisburg, Pa.

RESOLUTION APPROVED APRIL 10, 1954, BY THE COUNCIL OF ADMINISTRATION, DEPARTMENT OF PENNSYLVANIA, VETERANS OF FOREIGN WARS OF THE UNITED STATES, IN EXECUTIVE SESSION HELD IN UNIONTOWN, PA.

Whereas the entire Nation is conscious of the nature and threat of communism; and

Whereas much time already has been lost in curbing inroads of communism in government and private enterprise: Therefore be it

Resolved, That the Council of Administration, Department of Pennsylvania, Veterans of Foreign Wars of the United States, meeting at Uniontown, Pa., April

10, 1954, urges the Congress of the United States to stop stalling and speed up enactment of measures that will prevent the spread of communism in the United States and to mete out just punishment to Communists by enacting legislation that will accomplish the following purposes:

1. Making wiretapped information admissible evidence in court.
2. Strengthen the so-called Smith-McCarran Act which makes it a crime to advocate or teach the violent overthrow of our Government, by force or violence, by enactment of legislation clarifying that law so as to prevent another such decision by the Pennsylvania Supreme Court, which held invalid the conviction of Steve Nelson on sedition charges.
3. Amend the Constitution of the United States by making possible convictions on charges of treason in peacetime.
4. Extend provisions of the Smith-McCarran Act to include members of the Communist Party, instead of only its leaders.
5. Grant President Eisenhower's request to deny citizenship to anyone convicted of sedition, including native Americans.

ELMER D. CHRISTINE,
Department Commander.

Attest:

C. A. GNAU,
Department Adjutant.

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
Washington, D. C., April 7, 1954.

Hon. HERBERT BROWNELL, Jr.,
The Attorney General,
United States Department of Justice, Washington 25, D. C.

DEAR MR. BROWNELL: This is to express the interest of the Veterans of Foreign Wars of the United States, based on a long-standing objective dating back to 1926, for enactment of appropriate legislation to outlaw the Communist Party of the United States or any other organization having for one of its purposes or aims the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence.

Several bills are pending in Congress to accomplish this purpose. The bills are unanimous in their objectives but differ somewhat in procedures. Sponsors of such bills include Senator Margaret Smith, of Maine; Representatives Francis Walter, of Pennsylvania; Martin Dies, of Texas; Harley Staggers, of West Virginia, and many others. Preliminary hearings on several of these bills have been under way in Subcommittee No. 1 of the House Committee on the Judiciary, headed by Representative Louis E. Graham, of Pennsylvania.

It is the belief and the hope of the Veterans of Foreign Wars that the administration, through you, will throw its weight and support behind either one of the pending bills or a committee bill which may later be drafted to put an end to the legality of the international criminal conspiracy identified as the Communist Party.

Inasmuch as the courts and congressional committees, on the basis of evidence presented, have held that the United States Communist Party is a part and parcel of an international criminal conspiracy to overthrow our Government by force and violence, if necessary, it would seem unlikely that legislation to outlaw such a conspiracy would be declared unconstitutional.

Respectfully yours,

WAYNE E. RICHARDS,
Commander in Chief.

LIEUT. ELBERT CURTIS BAKER POST, No. 1290,
VETERANS OF FOREIGN WARS OF THE UNITED STATES,
Easton, Pa., April 7, 1954.

Hon. FRANCIS E. WALTER,
House of Representatives,
Congress of the United States, Washington, D. C.

DEAR CONGRESSMAN WALTER: At our last post meeting, held April 6, 1954, the membership of this post unanimously endorsed your proposed legislation that will make it possible to outlaw the Communist Party in the United States or at

least make it a crime to participate in its activities to overthrow the Government of the United States.

We sincerely hope that Congress will see fit to pass such vital legislation since we are in need of stronger means to combat their present conspiracy against our Nation.

We are taking this action as an individual post. Please be assured that the entire membership of Post No. 1290 is behind you in this matter.

With best wishes, we are

Yours in comradeship,

JOHN J. PIPERATA,
Post Commander.

[SEAL] ARCHIE L. MOORE,
Post Adjutant.

Mr. GRAHAM. Let us hear from Mr. Dies next.

STATEMENT OF HON. MARTIN DIES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DIES. Mr. Chairman and members of the committee, the bill which I have introduced, H. R. 7894, was prepared by Judge Michael Musmanno, a member of the Supreme Court of Pennsylvania. He has prepared an able brief in support of the bill. I had hoped to have him here this morning but, at the chairman's suggestion, he canceled his engagement and will appear at a later date.

I feel, Mr. Chairman, the Communist conspiracy ought to be outlawed. I think it is the only way you can effectively deal with it. In 1941 our committee unanimously found that until you destroyed the legal apparatus of the party, you could never deal with it.

We have been investigating this subject now for more than 20 years. Every committee of Congress and every court that has dealt with the question has found that communism is a criminal conspiracy and the party is itself a foreign conspiracy masked as a political party.

Congress, in the Security Act of 1950, characterized the Communist movement in the United States as criminal and treasonable.

In the preamble of H. R. 7894 I cite these findings.

In the course of some 7 years of investigation by our committee, while I was chairman, we found that Communists engaged in many crimes in furtherance of the conspiracy.

One of the crimes was that of Dr. Ballantine Burton, who counterfeited money and who was convicted. Earl Browder was convicted, and numerous others. That was in keeping with the basic teaching of Lenin that a revolutionary who will not combine every form of illegal procedure with every form of legal procedure is a poor revolutionary.

Since all the committees of Congress have found we are dealing with a criminal organization, not with a political party, something totally different from any political party in the world, it was the feeling of our committee composed of both Republicans and Democrats, that that legal apparatus should be taken from them. As long as they have it they are able to build up numerous frontal organizations and deceive the gullible people.

I do not think you can deal with it by definition. I think you have to outlaw the party itself and its affiliated and subsidiary and frontal organizations. All these terms have been adequately defined in the Subversive Control Act of 1950.

We have defined what is a Communist front organization. We have gone on record by approving these various definitions. It is my opinion we have to name the party and these frontal organizations and declare them illegal and terminate any rights they may have and make membership in the future where there is knowledge of the revolutionary organization a crime.

The Communist Party was once driven underground in the United States and it stayed underground until 1924, a period of 4 or 5 years. It was outlawed in this country. During that period which our committee studied very carefully, the party made no progress whatever. It was innocuous. It was only after it was able to enjoy a legal status and to deceive millions of gullible people in this country that they were able to do any effective work.

I request the committee to hear Judge Musmanno at some convenient date. He will present a brief which he filed with the Legislature of Pennsylvania. This bill was substantially enacted by the State of Pennsylvania.

Mr. GRAHAM. Pardon my interruption. We intend to invite Mr. Hoover and Mr. Brownell. And if necessary I will invite the Communist Party.

Mr. DIES. I think, Mr. Chairman, in view of the testimony of everyone on this subject that has been going on so many years that the time has now come to outlaw these criminal organizations and by passing my bill we will accomplish this. We will not only remove the legal apparatus but so far as the world is concerned, we go on record by saying, "We find as a nation that this is a criminal organization."

You would not permit organized crime to enjoy legal status in the United States, organized murder or theft; and certainly there is no further excuse to permit these organizations to exist legally.

The argument may be used that if you outlaw the Communist Party and its affiliated organizations they will shortly appear under another name. The bill I submit has a provision that says that whatever name they go under in the future——

Mr. CELLER. Where is that line?

Mr. DIES. It is on the second page.

The Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations and all other organizations, no matter under what name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, district, or possession thereof, or the government of any political subdivision therein by force and violence, are hereby declared illegal and not entitled to any of the rights, privileges, and immunities * * *

Mr. CELLER. Mr. Dies, just a minute. You speak about the Communist Party of United States and its various components. A component would be part of the Communist Party—affiliated. A subsidary would be a subsidiary to the Communist Party. Frontal organizations would be in front of the other. Would not all that refer back to the Communist Party as such? Wouldn't that cover what you are saying now?

Mr. DIES. Yes. It would cover all the branches of the international revolutionary Communist conspiracy that we have found to exist in the United States. That conspiracy is composed, among other things,

of the party and all its other organizations, affiliated with them. Your front organization has been defined by Congress in the Subversive Control Act. So you have that definition. But the conspiracy is composed of all those components.

Mr. HYDE. Mr. Dies, you and I both know and the members know that a number of times members of the Communist Party have gone abroad in Russia and have come back and assumed new names. Are you covering that in this bill?

Mr. DIES. This is dealing with organization. It is covered by the language in other organizations now named whose object is the overthrow of the Government by force or violence.

Mr. CELLER. I wonder if that is so. Suppose a new organization should arise which is not frontal to the Communist Party. It would not be covered; would it?

Mr. DIES. It would be covered in the subsequent language "any other organization whose object is the overthrow of the Government."

Mr. CELLER. The language "other organizations" would necessarily be correlated to the words "subsidiary to and frontal."

Mr. DIES. I suggest in that connection, Mr. Celler, that when Judge Musmanno appears you ask him this question. I know he has done an exhaustive work on this subject and has a very complete brief on the legal phases of it. He feels as I do, that this is the only way to reach this thing. You cannot reach it by general language and furthermore I believe that once you declare this illegal and break it up, you will not have any trouble in the future about communism undertaking to reorganize under another name.

If I may say so, Mr. Celler, I believe they would never have gotten to first base had it not been for ability to use camouflage and deceit.

I am quite sure that of the millions associate with the frontal organizations the vast majority of them had no idea what they were getting into. The hard core is a minor thing. It has proved to be that in this country.

When you declare them criminals then I think they will probably continue as a small band in the United States. But you destroy their effectiveness. The important thing is the declaration to the world that the Communist conspiracy is a criminal, treasonable movement.

Mr. CELLER. I sympathize with your objective. I wonder whether or not that carries out your objective?

Mr. DIES. I think it does. But in order to give you the answer to that question very definitely, I think the judge has prepared a brief and is ready to come at any time and discuss the legal phases of this bill in every respect.

Mr. GRAHAM. Mr. Dies, at that point, Steve Wilson used to work in my own area. They organized the steelmen and other groups, going under different classifications of groups they organized. Are you covering that?

Mr. DIES. I think it is covered in the words "frontal organizations, affiliated and subsidiary." Affiliated organizations would be the Young Communist League, Young Pioneers, and so forth. They are the organizations to direct the youth of the Communist Party. Then you have the frontal organizations. They are created and controlled by individual Communists but the party dictates the policies of the frontal organizations.

Mr. GRAHAM. That is my point. The policy arrangements of Moscow comes by transmission.

Mr. DIES. I think this will reach it. I am not concerned about the prospects of them reorganizing. I think the death blow will be dealt this movement when we, as a nation, by plain unequivocal language say this is a crime. You are a criminal. We have found it by law through investigative process and trials. Now you are a criminal. Once you declare that, from then on people will be more careful about their affiliations.

Once this thing is declared criminal the influence of the party to deceive by lies will be destroyed and when you destroy that you are through with it. And I think you will end this conspiracy by this sort of legislation. .

Mr. CELLER. Mr. Dies, I take it you do not wish to go as far as Mr. Walter does in this sense. Any organization that has for its purpose the overthrow of the Government by force and violence would come within the four squares of your prohibition.

Mr. DIES. That is right.

Mr. CELLER. That is, in order to be successful in prosecuting the organization and its members you would have to believe they desire to overthrow by force and violence. Mr. Walter feels you need not prove force and violence and that the mere organization and its existence would be sufficient to outlaw it.

Mr. DIES. Mr. Celler, let me answer it this way. You are treading on a dangerous field. The Socialist Party teaches the theory of communism. Socialism is communism. Up until the Third Communist Internationale they were in the same Communist movement.

Mr. CELLER. The Communists would deny that.

Mr. DIES. All of them recognize Marxism, Communists, and Socialists, as the foundation of their movement. They could not meet on common ground to accomplish their purpose. The Socialists did not go into the Third Internationale.

I would fight for the rights of anyone to preach communism if he would follow democratic methods. If a man said, I believe communism ought to be brought about by constitutional methods, I would say he would have a perfect right to do that.

But we know that this organization, the Communist Party, and the organizations that are part of it are criminal organizations.

Mr. CELLER. In any event, you would not go as far as Mr. Walter goes.

Mr. DIES. I have not read his bill and I do not know what it means. I know if we are going to deal with this we will have to spell it out. We have studied this subject for 20 years. We know what we are dealing with. If something else arises years from now, we can deal with it then. That is the point I am making.

Mr. HYDE. Mr. Dies, don't you think the first point raised by Mr. Celler is answered by the language of sections 2 and 3 in which you say, "and all other organizations" and in section 3, "any other organization."

Mr. DIES. I think that answers it.

Mr. HYDE. It does not have to be an affiliate or an adjunct or an extension of the Communist Party. If it is any other party that advocates the same thing to overthrow the Government by force and violence?

Mr. CELLER. By way of clarification, I take exception to that. When you use the basket term "all other organizations" that is correlated back to "affiliated, subsidiary, and frontal."

Mr. DIES. I cannot agree with that. You first define all other organizations. The word "other" could not relate back and be considered as part of it. However, if the committee reaches that decision, it is easy to correct by amendment.

Mr. GRAHAM. Wouldn't that be a matter of judicial interpretation of the act? If one group thinks this and another group this they are divorced in name but they are working toward a common purpose.

Mr. DIES. You do not have that difficulty. First you outlaw the Communist Party and then its affiliated groups. The next thing is to outlaw all other organizations advocating force and violence. The courts have already found that the Communist Party taught force and violence.

Mr. HYDE. Yes.

Miss THOMPSON. Your legislation would remove from the political ballots the Communist Party?

Mr. DIES. It would terminate all legal rights and immunities they have.

May I express my appreciation to my colleague who has been waiting here.

Mr. CELLER. Don't get the impression that I necessarily am opposed to your position when I asked those questions. I think the language can be clarified to carry out your intention.

Mr. DIES. I think that is right.

Mr. GRAHAM. Mr. Wilson is a member of our committee.

Mr. WILSON. Thank you, Mr. Chairman.

STATEMENT OF HON. J. FRANK WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. WILSON. Mr. Chairman and members of the subcommittee; I was very glad to defer to my colleague, Mr. Dies, because he had a television program to get to.

I appreciate the opportunity to appear before the committee and I will be very brief.

My bill, H. R. 7337, which is a bill somewhat like the other two bills that have been discussed but is a little different in detail.

I agree basically with both Mr. Walter and Mr. Dies in their theory, especially Mr. Dies and his theory that not only the courts but public opinion, and all the facts have demonstrated for years that the Communist Party of this country is nothing but a revolutionary conspiracy for the overthrow of this Government by force and violence.

I think every great decision and every jury trial and every sentence imposed by a court in this country has demonstrated beyond question that aside from the dupes and those who follow along in the wake of the real members of the Communist Party who evidently belong to the Communist Party—all this treats of a common criminal conspiracy for the overthrow of this Government by force and violence.

In my bill, and I had the aid of legislative counsel on drafting it, I outlaw the Communist Party as such because I think the precedents and the court decisions and the trials of these particular Communists,

both in bunches and as individuals, have demonstrated that we have come to a time when we must quit fooling with the Communists. We have been playing with them and permitting them to claim under our Constitution their so-called constitutional rights when, at the same time, they seek to destroy that very instrument of the freedom which has made the American people.

I think we must meet the issue and I think Congress has been derelict in its duty up to now in not meeting the issue long ago.

But it is certainly out of an abundance of caution. Certainly, the acts perpetrated and carried out by the Communists in this country and in doing all the things they have done, and in carrying on their nefarious activities they have increased all the while.

Mr. J. Edgar Hoover has said the principal reason we should not outlaw or make a felony of the Communist Party or their criminal conspiracy is that we drive them underground. I do not know how much further underground they can go. They deal at night and in back alleys to commit murder and to commit mass murder and to destroy this country and all it stands for.

Their constitutional rights which they so loudly proclaim in the witness stand, they use to cover their evil deeds.

Personally, I think Congress is wrong in saying a man can refuse to answer where he has been or if he was a member of the Communist Party because it has not until now been declared by law a criminal conspiracy and has not been a violation of the law to be a member of the Communist Party.

Mr. GRAHAM. In that connection, Mr. Wilson, doesn't the Constitution say that they can refuse to answer in a criminal case?

Mr. WILSON. That is true and I think the American people, the Congress, and the courts, have been overly indulgent with these revolutionary conspirators and the people are confused and confounded by the fact that Congress does not outlaw this criminal conspiracy.

I think the people in my district are certainly confused over this very complex proposition, that where a man, not being accused of a crime at all, but having been accused of being a member of a conspiracy for the overthrow of this Nation by force and violence, which is not a crime in this country and which has never been decided to be a crime by the courts, can refuse to answer on that basis.

Mr. GRAHAM. Would you mind considering *Dennis* v. *U. S.* (341 U. S., p. 494), tried in New York by Judge Medina? Here is what the court says. They held that the record in this case amply supports the finding of the jury that the petitioner, a leader of the Communist Party, unwillingly worked within our framework of government but attempted to initiate or seek its overthrow when the propitious time should come.

Mr. WILSON. I think it is very true.

I think if the committee should—and I have no pride of authorship in my bill, after careful consideration of the best legal advice, and I know the members of this subcommittee to be fine lawyers—declare the Communist Party to be a criminal conspiracy, and that thereafter—and I agree with Mr. Dies on that point—I think thereafter many of these dupes and folks who have followed along in the wake of the Communist Party or something else, will be stricken from it, and the essence of the offense is knowingly being a member, not only

of the Communist Party, as I said in my bill, but as I dictated it in section 1 (b):

"Communist Party" means the organization now known as the Communist Party of the United States of America, whether or not any change is hereafter made in such name.

The mere fact that they change their name overnight should not thwart the law or prosecution in the courts. I think all those who follow along in the wake, and I agree with Mr. Dies, they are all part of the world Communist conspiracy for the destruction of the rights of all human beings all over the world and the destruction of our Constitution, all the freedom of the individual all over the world in every other state and every other nation.

I appreciate this opportunity to appear before this committee and I know from past experience this committee will make a thorough study and a cautious study, and I hope the committee will come up with a bill so we can quit coddling these Communist agents who only seek murder—mass murder and the destruction of our country and everything we hold near and dear.

Mr. GRAHAM. Thank you, Mr. Wilson.

Now we will have Mr. Staggers, and then Mr. O'Brien.

STATEMENT OF HON. HARLEY O. STAGGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. STAGGERS. Mr. Chairman and members of the committee, I have introduced a bill, H. R. 6943, to deal with Communists in the United States. Before I start on the bill I would like to give a little preliminary leading up to the bill.

Last fall I took a trip over my district and traveled some 10,000 miles and had over 300 scheduled stops in my district.

At every stop I asked the question, What do you think of communism and what should be done about it? From the answers I received I came back to Congress and introduced a resolution to deal with communism on the first day of this session of the Congress.

The next day the President, in his state of the Union message, dealt with communism somewhat along the lines of the resolution I had introduced. I immediately called the White House and asked if I might talk to the President. It was granted, and I had the privilege of going down to see him and talked with him for 25 or 30 minutes on the issue of communism in the United States.

We went over my bill carefully, and I believe he agreed with me on the objective that I was trying to get across in the bill.

I took with me that day an editorial from the Wall Street Journal of March 11, the day preceding the day I talked to him. I would like to quote a paragraph from it:

This newspaper, we think, need yield to no one in its vigilance on the conspiracy which members of the Communist Party have waged from within against our institutions and our Government. But we hope this proposal does not mean what it seems to; or, if it does, that the Congress will reject it.

That is in the record of the President's message. Quoting further:

One of the sound and deeply ingrained traditions in our laws is that punishment, even while it may in the extremity be death, shall have a definite boundary and that a man atones for his crimes, insofar as his fellow man is concerned, when he has paid his penalty. The convicted felon, having paid his penalty, is not hounded for the rest of his life.

Mr. Chairman, I should like to put those in the record if I may.

Mr. GRAHAM. To what purpose?

Mr. STAGGERS. The remarks of the President in his state of the Union message; to construe the Constitution in this country in respect of citizenship. I brought the question up to the President and to what degree he agreed with the Wall Street Journal that he had not the power to give citizenship to any man in this country, with the exception he could pardon a convicted criminal and give him back his citizenship in that way. He thought he did not have the power to take away that citizenship.

I would like to give a little further background. I had prepared two different resolutions in the past on this same issue, but after consultation with friends I had not introduced them. One was to completely outlaw the Communist Party or conspiracy against the Government. Another one was to amend the fifth amendment so that anyone would be required to answer.

Mr. GRAHAM. Had it occurred to you there are bills before the subcommittee on that very thing?

Mr. STAGGERS. Yes. This had been introduced in the past and as far back as 1950. I gave a speech in the House in April 1950 pertaining to this subject and I quote from a Congressional Record of April 1950.

Mr. GRAHAM. Do you wish to submit that?

Mr. STAGGERS. I will quote a paragraph from it. This is April 4, 1950, from the Congressional Record, a speech I made on the floor:

If there be among us any who would seek to degrade, overthrow, or destroy our Government, let him be accused, given a fair trial, and proved guilty or innocent, and punished or freed. But I say to you let there be employed much care and caution when an accusation is made. Let us be sure we are right.

* * * * * * *

Communist, spy, traitor. These are strong words, destructive words, malignant words, words not to be hurled freely and promiscuously. To accuse an innocent person of a crime so hideous as that of being a foreign spy or traitor to one's government, just because that particular person happens to be a political enemy, a business enemy, or a social enemy, is to employ the handiwork of the devil.

And I go along in the same speech and say that the work should be turned over to experienced men and I said that the FBI should, if it is not strong enough, it should be given by Congress the money and the men to do the job.

Also to show that a proper approach should be made and the right steps taken in outlawing the Communist Party in this country I quote from the alien and sedition acts, to illustrate that we must not make the same kind of mistakes.

The Alien and Sedition Acts, in American political history, four acts passed by the Federalist Party in Congress in the summer of 1798 under John Adams, which were the immediate cause of the first nullification proceedings in the South.

The Alien and Seditions Acts of 1798 were passed by a political party to muzzle opposition criticism. Though Adams, defying his party prevented a full-scale war, he lost his election of 1800 to Jefferson. The Federalists never saw office again.

I quote that from the Encyclopedia Americana.

Mr. GRAHAM. Would you please put that in the record?

Mr. STAGGERS. It is only a small paragraph, if I might just read it:

It would naturally be supposed that the alien acts, which affected only a few foreigners and no internal liberties, and which as a fact remained entirely

unenforced, would have caused little commotion in the Republican Party; and that the Sedition Act, which struck at all liberty of free speech or publication, and was contrary to the very basis of free government, and under which at least six prosecutions and most scandalous performances of one Federal judge took place, would have provoked almost a civil war * * * The Republicans disliked the use of prosecutions under the Sedition Act as a party weapon and resented Judge Chase's partisan decisions, but it was only as directed against themselves, not as against civil liberty, that they reprobated it—neither party had attained to that ideal.

I would like to say this then, that I believe the proper way to handle this thing is through a Commission of the best minds we have in this land; not saying we do not have the best minds on the committee here, or those of any men who have presented their views here. But I think it is the most important thing that comes before us. It will affect our way of life. It is too big for any one segment of society. I believe a commission should be appointed consisting of 12 men or women or both of the best minds in the land to deal with it.

Mr. CELLER. Did you cite that quotation from the Encyclopedia Americana as an argument against the passage of this bill to outlaw the Communist Party?

Mr. STAGGERS. No. I said it purely to point out the danger of proceeding precipitously.

If there is a bill on the House floor tomorrow to outlaw the party I will vote for it but I think we should in drawing the bill be careful that the best minds of the land shall do it. This bill provides for 4 Members to be appointed by the Speaker of the House of Representatives; 4 by the presiding officer of the Senate; and 4 by the President to study the bill and make recommendations to the Congress as to what to do.

And they would have the power of subpena of records and witnesses and facts from any and every source in the land to ascertain the actual strength of the party in this land—I do not think that has ever been done—and to bring these facts to the people.

Mr. GRAHAM. There are 5 others to be heard and we only have 20 minutes. Be courteous to your fellow members. You have it all in the record.

Mr. STAGGERS. Thank you, Mr. Chairman.

Mr. GRAHAM. Before proceeding further, I wish to state that Mr. Clardy is ill. He has requested the inclusion of a statement by him in the record.

STATEMENT OF HON. KIT CLARDY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN (DELIVERED BY MR. TOM SUMNER REPRESENTING MR. CLARDY)

By Mr. SUMNER. Mr. Chairman and members of the subcommittee, I am here today representing Congressman Clardy, who, as you know, has been confined to his home in Lansing, Mich., as a result of a bout with bronchial pneumonia.

You also know that the Congressman is a member of the Un-American Activities Committee and, as such, is interested in this matter of outlawing the Communist Party. The Congressman's bill, H. R. 6877, was introduced January 6, 1954. As the Congressman's bill has a slightly different approach than some of the others, and because of the fact that he has received a tremendous amount of mail and

comment on it, he has asked me to appear before your honorable body to request permission for him to file a brief when he returns to Washington the first of next week. If this hearing is to be continued to a later date, the Congressman will welcome the opportunity of appearing personally in support of his bill. I know that he will appreciate any consideration you will give this request.

STATEMENT OF HON. LEO W. O'BRIEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. O'BRIEN. Mr. Chairman and members of the committee, I was hoping to hear your statement that your committee will work out a bill on this subject because I have great confidence in this committee and its respect for civil rights. I was about to plead guilty to oversimplification because in my bill I simply made it a crime to belong to the Communist Party.

I asked permission to appear here today as a man who changed his mind since 1948. As a newspaperman then I covered the Oregon campaign between Mr. Dewey and Mr. Stassen. There was only one issue, Should the Communist Party be outlawed?

I believed then it would be driving underground the many thousands of people who had embraced communism in this country. In this year 1954 I believe any member of the Communist Party should either be in a mental institution or in prison. I am not too much concerned about the possibility of their emerging under a new name because I feel if we are afflicted with a cancerous growth, we should cut it out even if it might spread some other ill into the body politic.

I have changed my mind since 1948 and I believe a great many people in the country regard the continuance of the Communist Party as an affront to them.

Mr. GRAHAM. Thank you, Mr. O'Brien. We will hear from Mr. Boggs.

STATEMENT OF HON. HALE BOGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. BOGGS. I have not heard anyone mention here today one of the main provisions of the bill introduced, H. R. 226, which I introduced some time ago. But I am certain that it will be considered by the committee as you have so kindly indicated that the members of this subcommittee are preparing to cover this whole field. That provision is the question of the definition of espionage in peacetime, so that such crimes may be punished by death.

In the Rosenberg case much of the controversy revolved about whether or not this conspiracy happened in wartime or peace. If it had happened in peacetime, the death penalty could not have applied. I think the time has come in our country, particularly in this cold-war situation that has been going on for some time and will probably continue for some time, that espionage must be defined as a crime in peace as well as in war.

My bill seeks to do that.

Today, the crime of treason is by every standard equally dangerous whether committed in time of war or in time of so-called peace. I am sure that this committee, in handling the continuing problem

of communism, in all its implications—and I subscribe to what other members have said today—will reach the conclusion that espionage should be made an offense punishable by death in peacetime as in wartime.

I am not wedded to the language of the proposed bill but I am sure the committee will give serious thought to it.

Mr. GRAHAM. You were one of the first and I am sorry to have held you up.

May I say before you all, if you want to submit a brief statement, you may supply it for the record here. There will be further hearings. Are there any other witnesses to be heard at this time? The statement of Congressman King will be inserted in the record.

STATEMENT OF HON. CECIL R. KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

All of us recognize the fact that the Communist conspiracy represents a dangerous and calculated attack on our national security. To understand the true nature and motives of those who flourish under the banner of the Communist Party of the United States, and in order not to confuse the aims of this group as in any way being a movement deserving the protection of the Bill of Rights, we should remember that the Communists in the United States are not members of a political party seeking to establish a new form of government, of, for, and by, the people of the United States, but rather a revolutionary conspiracy directed by and in the interest of a foreign government.

Because Communists are individually and collectively a group plotting against our American way of life, the time has arrived for Congress to take positive action and label Communists and other subversives as criminals who would seek to destroy our Government by force and violence.

There will, of course, be arguments against such a law; the chief of which seems to be that it would drive the Communists underground. With study, however, this will be found to be an argument without substantial validity, for the Communist Party of the United States is already an underground organization, and has been through the years.

J. Edgar Hoover, Chief of the FBI, in testifying before the House Appropriations Committee, stated that the Communists have gone underground and that today it takes as many as 9 or 10 FBI agents to keep surveillence on 1 suspected Communist, when before the job could be handled by 1 man. Mr. Hoover further testified that the Communist leaders have imposed tight new security procedures. Membership cards are no longer issued; records are destroyed; groups are limited to from 3 to 5 members; telephone and telegraph are avoided; false drivers' licenses have been obtained and names have been changed. This revelation should certainly prove that the conclusion of driving them underground is an absurdity.

Another argument that may be heard against my bill from some quarters is that it would be an abridgment of our constitutional liberties, but this, too, will be found to be invalid. Our Constitution and the Bill of Rights does not guarantee the right of espionage or sabotage, or the right to disrupt our freedoms in the service of a dictatorship which denies all freedoms.

The Communists in the United States are not members of a political party. On the contrary, they are members of an organization banded together in a conspiracy against our form of government, with the sole aim of destroying free institutions and overthrowing the very form of government that protects such institutions. For the past decade our domestic tranquillity, the insurance of which was called for in the preamble of the Constitution of the United States, has been continually upset by the Moscow-controlled order that has flourished in our midst under the guise of a political party.

It has become more and more evident in recent years that the Red conspiracy prevailing on our homefront, which hides behind the very laws it seeks to abolish, may prove more dangerous than an armed foe.

In 1950, in the case of *American Communications Association* v. *Douds*, the United States Supreme Court upheld a statute which referred to the Communist Party by name, and denied the benefits of certain provisions of the National Labor Relations Act to labor organizations whose officers failed to file non-

Communist affidavits. In 1951, in the case of *Dennis* v. *United States*, the United States Supreme Court states: "The Communist Party advocated and the general goal of the party was to achieve a successful overthrow of the existing order by force and violence." In this same case, the Court further affirmed the general power of Congress to legislate against activities looking to the overthrow of the Government of the United States deriving its power by the inherent power of self-preservation.

In view of these Court decisions, it is my firm belief that Congress would be remiss in its duty to the people of these United States, if it did not seriously consider enactment of legislation to brand those who now knowingly and willfully become, or remain, a member of the Communist Party, as criminals and traitors.

I believe the committee would also be interested in an analysis of H. R. 5941 and what I consider to be the principal objections that have been raised against legislation outlawing the Communist Party:

This measure imposes criminal penalties upon anyone who "knowingly and willfully becomes or remains a member of the Communist Party, or of any other oganization having for one of its purposes or aims the control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence. * * *"

The general power of Congress to legislate against activities looking to the overthrow of the Government of the United States derives from the inherent power of self-preservation (*Dennis* v. *United States* (1951), 341 U. S. 494, 501) and is not seriously challenged. The critical question is whether the means proposed in this particular bill would conflict with any constitutional restraints upon the exercise of powers granted to Congress.

The principal objections that have been raised against legislation outlawing the Communist Party are five in number:

1. Such a law would be a bill of attainder, which is forbidden by article I, section 9, of the Constitution.

2. It would impose punishment by legislative fiat and thus deny due process of law in violation of the fifth amendment.

3. It would deprive persons who desire to belong to a proscribed organization of their liberty without due process of law.

4. It would be a denial of due process of law to outlaw the Communist Party by name because that action would constitute a legislative determination that this party's activities are unlawful, which, under the Constitution, is a judicial function.

5. It would infringe the freedom of speech guaranteed by the first amendment.

The argument that this bill would amount to a bill of attainder is based upon the statement in *United States* v. *Lovett* ((1946), 328 U. S. 303, 315) that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." This argument would have force if the bill did in truth inflict punishment on anyone without a judicial trial. But H. R. 5941 would not have that effect. No one would be punished under it for anything he had done in the past. The bill simply makes it unlawful for any person to belong to certain organizations in the future, and prescribes the punishment to be inflicted, after a judicial trial, upon anyone who disobeys the prohibition.

The second objection stems from decisions to the effect that "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property. '* * * it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime'" (*Manley* v. *Georgia* (1929), 279 U. S. 1, 6, citing *McFarland* v. *American Sugar Co.* (1916), 241 U. S. 79, 86). These cases, however, involved statutes of a very different tenor from the bill under consideration. Those statutes provided that in stated circumstances, certain persons should be presumed to be guilty of specified crimes. H. R. 5941 does not authorize a finding of guilt on the basis of a presumption that the accused did something which in fact he may or may not have done. It does make a finding that "any person who knowingly and willfully becomes or remains a member of the Communist Party or any other subversive organization of similar nature may be reasonably presumed to have adopted and undertaken to support the aims and purposes of such organization." But this is simply a statement of the reason which prompted the enactment of section 2, where penalties are prescribed unconditionally, not for anything a defendant is presumed to have done,

but for the proved fact of becoming or remaining a member of the Communist Party.

The remaining objections, that the bill would constitute a deprivation of liberty without due process of law, or an infringement of freedom of speech, in violation of the fifth and first amendments, respectively, are more substantial. Since it is clear that the bill would curtail rights protected by the Constitution, the force of these objections depends upon whether sufficient justification exists for such curtailment. A decade ago, in *Schneiderman* v. *United States* ((1943) 320 U. S. 118, 157, 158), the Supreme Court reversed a judgment canceling the naturalization certificate of a member of the Communist Party, saying:

A tenable conclusion from the foregoing is that the party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counteroverthrow once the party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open.

There is a material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil, and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time—prediction that is not calculated or intended to be presently acted upon, thus leaving opportunity for general discussion and the calm processes of thought and reason. * * * Because of this difference we may assume that Congress intended, by the general test of "attachment" in the 1906 act, to deny naturalization to persons falling into the first category but not to those in the second. Such a construction of the statute is to be favored because it preserves for novitiates as well as citizens the full benefit of that freedom of thought which is a fundamental feature of our political institutions. Under the conflicting evidence in this case we cannot say that the Government has proved by such a preponderance of the evidence that the issue is not in doubt, that the attitude of the Communist Party of the United States in 1927 toward force and violence was not susceptible of classification in the second category. Petitioner testified that he subscribed to this interpretation of party principles when he was naturalized, and nothing in his conduct is inconsistent with that testimony. We conclude that the Government has not carried its burden of proving by "clear, unequivocal, and convincing" evidence which does not leave "the issue in doubt," that petitioner obtained his citizenship illegally. In so holding we do not decide what interpretation of the party's attitude toward force and violence is the most probable on the basis of the present record, or that petitioner's testimony is acceptable at face value. We hold only that where two interpretations of an organization's program are possible, the one reprehensible and a bar to naturalization and the other permissible, a court in a denaturalization proceeding, assuming that it can reexamine a finding of attachment upon a charge of illegal procurement, is not justified in canceling a certificate of citizenship by imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation.

This case has often been cited in support of the proposition that the Communist party is a lawful political party and cannot constitutionally be denied the rights of any other such party. Actually, as the two concluding sentences make clear, the Court did not decide whether the program of the party was lawful or unlawful, but held only that the Government had not proved that its program in 1927 was so clearly unlawful as to justify cancellation of citizenship granted to a member of the party at that time.

The question thus left open in the Schneiderman case was squarely decided in *Dennis* v. *United States, supra*. There the court of appeals found that the record supported the following broad conclusions, as summarized by the Supreme Court (341 U. S. 494, 498):

By virtue of their control over the political apparatus of the Communist Political Association, petitioners were able to transform that organization into the Communist Party; that the policies of the association were changed from peaceful cooperation with the United States and its economic and political structure to a policy which had existed before the United States and the Soviet Union were fighting a common enemy, namely, a policy which worked for the overthrow of the Government by force and violence; that the Communist Party is a highly disciplined organization, adept at infiltration into strategic positions, use of aliases, and double-meaning language; that the party is rigidly controlled; that Communists, unlike other political parties, tolerate no dissension from the policy laid

down by the guiding forces, but that the approved program is slavishly followed by the members of the party; that the literature of the party and the statements and activities of its leaders, petitioners here, advocate, and the general goal of the party was, during the period in question, to achieve a successful overthrow of the existing order by force and violence.

The Supreme Court upheld the decision of the court of appeals, saying:

Petitioners intended to overthrow the Government of the United States as speedily as the circumstances would permit. Their conspiracy to organize the Communist Party and to teach and advocate the overthrow of the Government of the United States by force and violence created a "clear and present danger" of an attempt to overthrow the Government by force and violence. They were properly and constitutionally convicted for violation of the Smith Act.

In support of the contention that this proposed law would be invalid because it mentions the Communist Party by name, the decision of the Supreme Court of California in *Communist Party* v. *Peck* ((1942), 20 Calif. 2d 536, 127 P. 2d 889), is cited. That case held that the legislature could deny a place on the ballot to any party which advocated the overthrow of the Government by force, but that it was without power to determine that a particular group, i. e., the Communist Party, advocated the doctrine which violated the policy laid down in the statute. But in *American Communications Association* v. *Douds* ((1950) 339 U. S. 382), the Supreme Court upheld a statute which referred to the Communist Party by name, and denied the benefits of certain provisions of the National Labor Relations Act to labor organizations whose officers failed to file non-Communist affidavits. While the provisions there sustained did not involve criminal penalties, that difference does not seem to be significant. The Court recognized that by exerting pressures on unions to deny office to Communists, the act had the necessary effect of discouraging the exercise of political rights protected by the first amendment, which result was justified only because the activities of the Communist Party were inimical to the welfare of the United States. The Court explicitly refused to draw a distinction between indirect "discouragements" and criminal penalties in such a case. It said:

"The statute does not prevent or punish by criminal sanctions the making of a speech, the affiliation with any organization, or the holding of any belief. But as we have noted, the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free-speech question. Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of first amendment rights as imprisonment, fines, injunctions, or taxes."

Accordingly, so long as the majority of the Supreme Court adheres to the doctrines of *American Communications Association* v. *Douds, supra*, and *Dennis* v. *United States, supra*, it appears that Congress has constitutional power to make it a crime to remain or become a member of the Communist Party or any similar subversive organization.

One minor point requires further comment. H. R. 5941 would outlaw "any * * * organization having for one of its purposes or aims the * * * control [or] conduct * * * of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force * * *." Every government uses some force in the conduct of the government, e. g., in arresting criminals or quelling riots. Hence there is a possibility that this provision would be held unconstitutional either on the ground that it is too broad because not restricted to organizations which would use force unlawfully, or that it is too vague to furnish an ascertainable standard of guilt. *Winters* v. *New York* ((1948) 333 U. S. 507).

(Whereupon, the subcommittee adjourned, to resume hearings on April 5.)

INTERNAL SECURITY LEGISLATION

MONDAY, APRIL 5, 1954

(NOTE.—The following bills were referred to the subcommittee after March 18, 1954:)

[H. R. 8483, 83d Cong., 2d sess.]

A BILL To make affiliation with the Communist Party of the United States unlawful

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That affiliation of the Communist Party of the United States with an international Communist conspiracy to overthrow by force and violence the Government of the United States has been established by evidence and proof in the courts and through the investigative procedures of the United States.

SEC. 2. The Communist Party of the United States is hereby declared illegal.

SEC. 3. Any person belonging to the Communist Party of the United States on or after the date on which the President of the United States affixes his signature to this Act is guilty of a Federal offense and, upon conviction thereof, shall be sentenced to imprisonment for not exceeding ten years or fined not exceeding $10,000, or both.

[H. R. 8489, 83d Cong., 2d sess.]

A BILL To accelerate consideration by the courts of criminal proceedings involving treason, espionage, sabotage, sedition, and subversive activities, and to increase to fifteen years the statute of limitations applicable to such offenses

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the application of rule 50 and rule 39 (d) of the Federal Rules of Criminal Procedure and of rule 20 of the Rules of the Supreme Court of the United States, the United States district courts, the United States courts of appeals, and the Supreme Court of the United States, respectively, shall give preference to criminal proceedings involving offenses described in chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), and chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, and to criminal proceedings involving a conspiracy to commit any offense described in such chapters.

SEC. 2. (a) Chapter 213 of title 18 of the United States Code is amended by adding at the end thereof a new section as follows:

"§ 3292 Treason, espionage, sabotage, sedition, and subversive activities—

"No person shall be prosecuted, tried, or punished for—

"(a) any offense described in chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities), other than any such offense punishable by death; or

"(b) any offense under section 371 (relating to conspiracies) which involves a conspiracy to commit any offense described in chapter 37, chapter 105, or chapter 115

unless the indictment is found or the information is instituted within fifteen years next after the offense shall have been committed."

(b) The analysis of chapter 213 of title 18 of the United States Code is amended by adding at the end thereof a new item as follows:

"3292. Treason, espionage, sabotage, sedition, and subversive activities."

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

Subcommittee No. 1 met at 10 a. m., Hon. Louis E. Graham (chairman) presiding.

Present: The Honorable Messrs. Graham, Walter, Hyde, and Feighan; and the Honorable Ruth Thompson.

Also present: Walter M. Besterman, legislative assistant, and William R. Foley, committee counsel.

Mr. GRAHAM. The committee will please be in order. If you will permit the chairman to make a preliminary statement for the record; this is a continuation of the hearings started on March 18. The first man on our list this morning is Congressman Bennett of Florida, but I see in the room this morning the Democratic whip, Hon. John W. McCormack, who is here at my invitation, because Mr. McCormack is one of the first men who ever dealt with the subject under consideration.

We will continue the hearings today as best we can. We will stop at a quarter of 12, because there will be important legislation for consideration on the floor. Then we will go over to Wednesday and on Wednesday we will transact such business as we can and then we will go over to the following Monday, but I may suggest that in the event we have more witnesses than can be heard on Wednesday, we might follow through on Thursday.

It is the plan of the leadership of the House, as I understand it, to adjourn on Thursday night the 15th. During the interim, certain of our members will be abroad. Mr. Walter will be gone and also certain members of the staff will be away. Mr. Feighan who will take the place of Mr. Walter when he is absent will be sitting in with us in order to properly orient himself with the hearings.

The first witness on our list this morning is Mr. Bennett, of Florida.

Mr. BENNETT. Mr. Chairman, I will be very glad to yield to Mr. McCormack.

Mr. MCCORMACK. I would rather you proceed, Mr. Bennett.

Mr. BENNETT. I would prefer to yield to Mr. McCormack, because I know he is a busy man.

Mr. GRAHAM. We will be very glad to hear from Mr. McCormack at this time.

STATEMENT OF HON. JOHN W. McCORMACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MCCORMACK. Mr. Chairman and members of the committee, my name is John W. McCormack, a Representative in Congress from the Commonwealth of Massachusetts.

Mr. Chairman, I think I am not only conversant with but have had some experience in investigations.

Directing myself to the legislation before the subcommittee, I was chairman of a special committee of the House of Representatives in 1934 that investigated communism, nazism, fascism, and also that other detestable activity, bigotry.

As you will remember, the activities of Hitler were very prominent in those years, but hiding behind them also, was the activity of atheistic communism.

As a result of our investigation, we discovered some rather amazing evidence and through the public opinion aroused, Hitler ordered the German Bund, or the Nazi activity in America to be disbanded. Of course World War II followed. We know the terrible results of that so that while that particular form of totalitarianism is asleep, through defeat, nevertheless, we have always got to watch totalitarian movements to the right as well as to the left.

There are a number of dictator-minded people within our own midst.

We also found a group of certain wealthy people formed in New York City, a conspiracy, fantastic I will agree, but the idea is, it was established that, in their fear and desperation that the late Franklin D. Roosevelt, and I say this factually and not politically, that he was going to tax all our wealth away, actually approached the late Gen. Smedley D. Butler, to form a veterans organization with a high-sounding constitution, that anyone could join, who was a real American, if he had already read the constitution and by-laws, but in fact was to be an organization that would subvert our Government to the dictatorship of the so-called right. The fact is that Smedley Butler just led them on in order to get the facts. Under no condition would he have been a party to it but he led them on for the purpose of exposing them, and my committee ascertained the fact. Butler appeared and testified, and then, of course, public opinion exerted itself in that case and it very quickly blew up. But there are still some such persons among us and they must be watched.

Then coming down to communism, in the report we made on February 15, 1935—and this sounds like ancient history now as I look back, and as we read the newspapers today, I was a rather lonely figure in those days, criticized and condemned with nobody defending me. I get a sort of, well, will I say—well I will not say a feeling of amusement, but I was so many years ahead in trying to warn the people of America of the potential dangers of this movement, known as communism.

In the report that we made my committee—and, by the way, we were unanimous; and I might say that when we had our meetings, our first meetings, we agreed that we were sitting as judges, that the character and reputation of innocent persons might be involved, and we imposed upon the committee the rules of evidence applicable in the courtroom, that the testimony had to be relevant, material, and pertinent in order to avoid hearsay evidence, which, of course, has been used in many instances in which reputation has been impaired.

We also agreed that so long as the investigation was underway and that since we were sitting in the capacity and, in a sense, as judges, weighing the evidence under oath, that none of us would make any speeches until there was a final conclusion of a particular investigation. In other words, that we were sitting as judges and we were not talking about it before the committee finally made a decision of any specific investigation. I am not talking about the entire investigation, but some specific investigation, until the committee had made its findings, that we would be placing ourselves in the position of prejudging evidence that we were receiving under oath.

We took evidence, all the evidence, in executive session, and we treated every witness alike, so far as the witnesses were concerned, without regard to our personal views about individual witnesses.

We found in our report that the Communist Party in the United States was not a national political party concerned primarily and legitimately with conditions in this country. Neither does it operate on American principles for the maintenance and improvement of our form of government established by the organic law of the land. The nature and extent of the organized Communist activities in the United States have been established by competent testimony, and the objectives of such activities clearly defined—this was in 1934 and 1935 that I am speaking of now—it seems that everybody agrees with that now, in 1954.

Both from the documentary evidence submitted to the committee and from the frank admissions of Communist leaders, Browder and Ford—Earl Browder was the head of the Communist Party in those years and Ford was very active and a prominent member—this part was established. In fact, I think at one time they were candidates for President and Vice President on the Communist Party ticket, if my memory serves me right.

In those hearings—and this is based on evidence, and again it was not hearsay—on July 12, 1934, these objectives included—and this was the evidence presented to the committee:

One, the overthrow by force and violence of the republican form of government guaranteed by article IV, section 4, of the Federal Constitution—

and the evidence justified that conclusion.

Two, the substitution of the Soviet form of government based on class domination, to be achieved by abolition of elected representatives, both to the legislative and executive branches, as provided by article I, by the several sections of article II of the same Constitution and by the 14th amendment.

Three, the confiscation of private property by governmental decree without the due process of law and compensation guaranteed by the fifth amendment.

Four, restriction of the rights of religious freedom, of speech, and of the press as guaranteed by the first amendment.

How well these things have developed as communism has spread, and consolidated itself and found peoples of unfortunate lands, every one of these findings that we made has developed.

Mr. WALTER. Did your committee recommend the enactment of any legislation?

Mr. MCCORMACK. Yes, sir, we did. My committee made six recommendations. One of the recommendations was what is now known as the Smith law. We recommended making it a crime for anyone to knowingly and willingly advocate the overthrow of the Government of the United States by force and violence. I introduced legislation to carry out that recommendation, but I could not get a hearing before this very distinguished committee. It violated States rights I was told. And that decision was made by one of the grandest Americans that I have ever known, and he was sincere. That was some 20 years ago.

Mr. WALTER. I happen to have been on the subcommittee and participated in the discussions at that time, Mr. McCormack, and your proposed legislation did not propose, in effect, this act; it was not the Smith Act; it went much further and in the wisdom of this committee, the hearings were not held because you were not able to put together the kind of legislation that would carry out the ideas without violating certain fundamentals.

Mr. McCormack. Well, now, that you have raised that question, will you inform me as to where it did violate certain fundamentals in law. I did not raise the question. The law simply stated that it would be a crime for anyone to knowingly and willingly advocate the overthrow of Government by force and violence. I think you have reference to the Foreign Agents Registration Act. There you are entering into a different field. That law was recommended by my committee. That did require a tremendous amount of consideration.

When I introduced that bill, I invited criticism, and I said that we were going into an unknown field, which might invade the civil rights and civil liberties and certainly I did not want to recommend the enactment of any law that would invade the civil rights and civil liberties of law-abiding Americans, certainly of my own rights, so I invited criticism at that time, specifically saying that I had no pride of authorship and I welcomed all kinds of criticism. And, as a result, within the course of 2 or 3 years, this committee, with suggestions, did develop a bill which was reported out, as you remember, and which some years ago became a law, which law is now known as the Foreign Agents Registration Act. I think you may have had in mind, Mr. Walter, that particular bill, because I cautioned against haste; I advised careful inquiry in the consideration of that bill and it was well that it was done, because a very good bill came out, and in the experience of time this committee has made additional amendments to it, to improve upon the law.

Now, we had Earl Browder before us and instead of letting him go into the philosophy of communism, which he wanted to do, because the Communists wanted to use the committees as a sounding board for publicity purposes, and to try, through such publicity, to increase their strength. I confined them to their own records, not that I recommend that now, and I am not recommending that to the committee here. But in 1934 I felt that the important thing was to try and develop the relationship between the Communist Party in the United States and the Communist Party in the Soviet Union which operates, as you know, through the Third International in the international aspect, the Third International being the technical organization for the Soviet Union to say the Soviet Government is not doing this itself; it is the Third International or that it is the action of the Third International.

I am going to leave here a copy of the report of the members of my committee. In that report, we quoted the testimony of Earl Browder in detail. We summoned him to bring in the records of the Communist Party which they had adopted in their conventions, and and we put them in the record as the evidence instead of going into any of them; we made them all a part of the record, everything that he admitted was official as being actions of the Communist Party; we put them in and they all became a part of the hearings and of course they were the best evidence.

Mr. Graham. May I interrupt for a question, Mr. McCormack?

Mr. McCormack. Certainly.

Mr. Graham. That report I read many years ago. It is very rare and is hard to get, and if there is no objection, I think it would be well to introduce it in the record at this time, so it would be available in our report.

Mr. McCormack. Thank you very much.
(The report referred to follows:)

[H. Rept. 153, 74th Cong., 1st sess.]

INVESTIGATION OF NAZI AND OTHER PROPAGANDA

The committee derives its authority from House Resolution 198, adopted by the House on March 20, 1934, text of which resolution is as follows:

"*Resolved*, That the Speaker of the House of Representatives be, and he is hereby, authorized to appoint a special committee to be composed of seven Members for the purpose of conducting an investigation of (1) the extent, character, and objects of Nazi propaganda activities in the United States, (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"That said special committee, or any subcommittee thereof, is hereby authorized to sit and act during the present Congress at such times and places within the United States—whether or not the House is sitting, has recessed, or has adjourned—to hold such hearings, to require the attendance of such witnesses, and the production of such books, papers, and documents, by subpena or otherwise, and to take such testimony, as it deems necessary. Subpena shall be issued under the signature of the chairman and shall be served by any person designated by him. The chairman of the committee or any member thereof may administer oaths to witnesses. Every person who, having been summoned as a witness by authority of said committee or any subcommittee thereof, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the investigation heretofore authorized, shall be held to the penalties provided by section 102 of the Revised Statutes of the United States."

Following the adoption of House Resolution 198, and in accordance therewith, Hon. Henry T. Rainey, Speaker of the House, appointed a special committee, consisting of Representatives McCormack of Massachusetts, chairman; Dickstein of New York, Weideman of Michigan, Kramer of California, Jenkins of Ohio, Taylor of Tennessee, and Guyer of Kansas.

The total amount allocated by the House of Representatives for this investigation was $30,000.

This committee named Representative Samuel Dickstein as vice chairman of the committee and designated Hon. Thomas W. Hardwick of Georgia as committee counsel.

In undertaking to comply with this resolution and to make the investigation ordered by it, your committee has made every endeavor to act with extreme caution and prudence in obtaining pertinent evidence, employing special investigators to make preliminary examinations into such matters, and conducting executive hearings prior to open and public hearings, with the twofold object of securing proper evidence to be developed in its public hearings, and of protecting the reputation and character of any person from unwarranted reflection in connection with such activities.

In connection with its investigations, the committee has conducted seven (7) public hearings and twenty-four (24) executive hearings, at the cities of Washington, D. C., New York, Chicago, Los Angeles, Asheville, N. C., and Newark, N. J. It has taken 4,320 pages of testimony at these hearings, examining several hundred witnesses. The testimony taken at the public hearings has been reported and printed and is herewith submitted as a part of this report.

The board preview of the work of the committee is perhaps best described in the statement made by the chairman of the committee at the beginning of the first public hearing conducted by the committee on June 5, 1934, in Washington, D. C., when Mr. McCormack said:

"A period of profound and protracted depression has followed in the wake of the World War. It has been worldwide. More than 15 years have elapsed since the ending of that war, but its blighting effect upon the economic life and upon the morale of practically all the peoples of the world still exists. During such a period of unrest, discontent with the existing order, and a widespread agitation for changes in the form, character, and substance of governments has spread over the world, overturning established governments and resulting in many new and radical experiments in government.

"In Europe, almost without exception, governmental systems that sought to guarantee the rights and liberties of the citizens were overthrown and either Communism or Fascism installed. In either instance, whether the movement was to the right or to the left, despotism supplanted freedom under parliamentary government and the rights and liberties of the people perished. Freedom of the press, freedom of speech, and freedom of assemblage were denied to the people under either system. In these circumstances, with so large a percentage of its population of foreign, usually European, origin, the House of Representatives has keenly sensed and fully realized the danger of vicious propaganda of foreign origin aimed at the subversion of those fundamental principles upon which our Constitution rests and seeks to investigate the extent and origin of such propaganda, with the ultimate object of protecting this country and its people from its dissemination.

"Any organized propaganda that seeks to teach the American people that other systems of government that are either communistic or fascist in character are preferable to our own is dangerous to a degree.

"Any organized effort to advocate or promote the establishment of a new system of government which shall deny to the people of this country those rights and liberties that were bought by the blood of their fathers and are guaranteed in our Constitution is disloyalty.

"The attempt to substitute for our present Government any system of government that ignores the right of the citizen to free press, free speech, freedom of assemblage, or freedom of religion is hardly, if any, short of treason, and any effort to accomplish such a result ought to be exposed, forbidden, and prevented is necessary. Even if the propagandists of today are careful to avoid either the present employment or advocacy of force and violence to accomplish their objects, it must be remembered that the right of free speech of these propagandists ought not to stretch from liberty to license nor be permitted to occasion the ultimate destruction of free speech for all others except themselves.

"The committee welcomes any information or evidence relative to this inquiry the committee is conducting, but will make its own independent investigation of evidence given it.

"We are concerned with any efforts or movement to array Americans against Americans which is subversive to our fundamental principles. Any effort to organize Americans into a group or bloc based on racial lines or as a result of intolerant views held toward other Americans strikes at the fundamentals of our Government.

"Organized efforts to create and implant the seeds of distrust, suspicion, and hatred in the minds of some of our citizens and directed toward others should be exposed and the facts brought to light.

"Experience teaches us that depressions of the past have been followed by intolerant movements which have been disturbing and harmful. The exposing of the early stages of such movements might prevent the harm that flows from the development of a well-organized movement based on emotionalism and prejudice.

"There is no justification on the part of any of our citizens, or of any person, irrespective of the land of their birth or of their forebears, to feel that this inquiry is directed toward them. Any effort to create such an impression is unwarranted and simply an appeal to emotionalism.

"Every person imbued with a love of our institutions should be interested in and concerned about the facts of any such movement or efforts being ascertained and brought to light.

"In the conduct of this investigation the committee holds no brief for any group or class of our citizens. It has no preconceived views of what the truth is respecting the subject matter of this inquiry. Its sole purpose is to discover the truth and report it as it is, with such recommendations, if any, as to legislation on these subjects as the situation may require and as the duty of the Congress to the American people may demand."

NAZISM

We would not be fully responsive to our duty if we failed to compliment the twenty-odd-million Americans of German birth or descent, who have refused to participate in the Nazi movement and propaganda in this country, which the evidence plainly shows have been founded, in the main, on racial and religious prejudices.

This committee has had evidence to show the strenuous efforts made to enlist these twenty-odd-million persons. This committee has evidence to show the wiles and blandishments that were employed, and when these failed, the scurrilous attacks that were utilized, in an effort to bring them into the Nazi program.

Again, this committee compliments in the highest terms, those people who have adhered to the American principles and American ideals, because they have made this country their homeland and because they believe in the rights of equality granted under our form of Government.

This committee has unearthed evidence showing that an effort to spread the theory of the National Socialist German Labor Party, commonly referred to as the Nazi philosophy, had been under way in the United States for several years.

In order to simplify matters, we shall divide the Nazi activities into two periods, the first covering all of the time prior to the designation of Adolph Hitler as Chancellor of Germany, and the second, covering the period after Adolph Hitler became Chancellor and to the present time. By way of explanation, it should be stated that up until the time that Adolph Hitler became Chancellor, the National Socialist German Labor Party was a minority political party in Germany.

The first real representative of the National Socialist German Labor Party of which this committee has definite knowledge, was one Kurt Georg Wilhelm Luedecke, who admitted under oath before this committee that he utilized his position of traveling representative for a German commercial house, as a smokescreen behind which to disseminate his propaganda in the United States, in an effort to gain adherents and financial support for the Nazi movement.

Luedecke, on his own admission, stated that while he was here acting as a propagandist for a minor political party in Germany, he gained access not only to the press galleries of the Congress, but also to press gatherings in the White House.

During this time, Luedecke established in Brookline, Mass., what was known as the "Swastika Press," in one issue of which he said:

"We repudiate the doctrine of popular sovereignty. Believing in the authority of leadership, in the value of personality, we advocate a state of truly sovereign authority, which dominates all the forces of the Nation, coordinating them, solidifying them, and directing them toward the higher ends of national life; an authority which is at the same time in constant touch with the masses, guiding and educating them, and looking after their interest."

Luedecke characterized himself as No. 7 in the Nazi Party, designating Adolph Hitler as No. 1. He boasted of his friendship with all the heads of the various branches of the Nazi Party and the Nazi Government of Germany (pp. 96–138, N. Y. 12).[1]

During this first period, as we have characterized it, efforts were inaugurated by individuals and groups, who believed in the policies of the National Socialist German Labor Party, to establish them here. This committee has evidence of such efforts particularly in the cities of New York and vicinity, Chicago, and Los Angeles. They sought diligently to bind together in this country people of German birth and German descent into a political group that was and was to be directed from abroad, in distinct violation of every known American principle.

These individuals organized a group which became known as "Teutonia," and which, through various stages, finally became known, after the advent of Adolph Hitler, as Chancellor, as "The Friends of New Germany," which brings us to the second period of acitivity.

Early in the history of The Friends of New Germany the leadership was usurped by one Heinz Spanknoebel, an alien, who entered this country claiming to be a clergyman.

One of his first activities was to take over, by intimidation and without compensation, a small newspaper in New York published by the German Legion, which paper he largely financed by subsidies under the guise of advertisements granted him by the German steamship lines as well as the German railways (pp. 229–245, D. C. 4).

Documentary evidence before the committee obtained from the companies shows that this subsidy was ordered from Germany and amounted, in the case of the steamship lines, to $600 per month and in the case of the railways to $200 per month without regard to the amount of space used. The evidence established

[1] References in this report are to pages of the hearings.

that Spanknoebei ordered another American-German paper in New York City to discontinue its publication, which order, while resented, was complied with. The evidence also shows that he undertook to determine and supervise the news and editorial policy of certain other American newspapers, and that in at least one case his orders were refused and his efforts resisted (pp. 17–37, N. Y).

He also became very active in and obtained control of the Stahlhelm, a German veterans' organization, causing those members who were opposed to his policies to withdraw, and utilized the remainder of the membership and this organization in the Nazi movement (pp. 308–331, D. C. 4).

Through devious methods he gained control of the United German Societies of New York, a body in that city composed of delegates from many American-German organizations, causing a breach among the members which has not yet been healed. As a result of such efforts Spanknoebei exerted tremendous influence on the various organizations, most of which had been in existence for decades in the United States.

Successful efforts were made to establish locals or units of "The Friends of New Germany" in many other American cities, the membership consisting in the main of aliens. The evidence clearly shows that the movement received the direct and indirect aid of certain accredited German representatives to this country (D. C. 4 and N. Y. 7).

In the fall of 1933 a Federal grand jury in New York City indicted Spanknoebel for failing to register as the agent of a foreign country, and he is now a fugitive from justice.

His successor, Fritz Gissibi, one of the original founders of the "Teutonia," also an alien, then became the leader of the Nazi group in this country and carried on the same general activities (p. 71–145, D. C. 4).

Later Gissibl was succeeded by one Reinhold Walter, who is a citizen of this country. This was done in an effort to give the organization the appearance of being "American" in character, although Walter admitted to the committee that Gissibi remained the real head of the movement and continued to dominate its policies, although, he, Walter, desired to divorce the organization from its German connections. Mr. Walter was succeeded in July 1934 by Hubert Schnuch, a naturalized citizen and college graduate, who was chosen for the position by Gissibi and continued Gissibi's policies. He is the present party leader (pp. 37–62, N. Y. 7).

Although started 7 or 8 years ago, its self-appointed leaders did not seek to charter their organization until the fall of 1934. Recently Justice Edward J. McGoldrick of the Supreme Court, New York County, N. Y., refused to grant them a charter.

However, lack of a charter, lack of a constitution or bylaws or any of the steps usually taken by American organizations, did not hinder these leaders from functioning.

The evidence plainly shows that they took orders not only from the National Socialist German Labor Party, but from some members of the Cabinet of that country.

This committee found indisputable evidence to show that certain German consuls in this country, with all the appurtenances of diplomatic immunity, violated the pledge and proprieties of diplomatic status and engaged in vicious and un-American propaganda activities, paying for it in cash, in the hope that it could not be traced (pp. 14–32, D. C. 4; pp. 87–110, N. Y. 7; p. 3–14, D. C. 4)

One of the transactions in question, which can be found in the evidence taken by this committee, goes to the Germany Embassy itself, and until recently no effort was made to stop such practices (pp. 14–32, D. C. 4; pp. 703–727, D. C. 6 II).

Several American firms and American citizens as individuals sold their services for express propaganda purposes, making their contracts with and accepting compensation from foreign business firms. The firms in question were Carl Byoir & Associates and Ivy Lee-T. J. Ross. The owner of the Ivy Lee-T. J. Ross firm admitted to the committee that the reports he furnished to the I. G. Farben Industrie, his ostensible employer, dealt with public and political questions rather than trade promotion, and that they were intended to be relayed to the German Government. For this service he received $25,000, all payments of which were in cash, and an effort was made to secrete the connections. Mr. Lee also admitted that he had never made such a contract before (p. 192, N. Y. 7).

Carl Dickey, junior partner of Carl Byoir & Associates, testified that his firm handled the contract with the German Tourist Bureau with the fee for services set at $6,000 per month. He testified that the contract was secured with the

help of George Sylvester Viereck who received $1,750 per month with free office space and secretary as his share of the $6,000. The committee finds that the services rendered by Carl Byoir & Associates were largely of a propaganda nature (pp. 33–67, D. C. 4).

Viereck admitted that he discussed the Byoir contract with a German Cabinet officer before it was entered into. He further testified that he had also been paid the sum of $500 monthly "for 4 or 5 months" by Dr. Kiep, former German consul general in New York City, which was paid in cash for advice of a propaganda nature (pp. 87–111, N. Y. 7).

The first payment on the contract amounting to $4,000 was made by Dr. Kiep, German consul general in New York City, in cash.

The National Socialist German Labor Party, through its various agencies, furnished tons of propaganda literature, which in most cases was smuggled into this country. Some of it, however, came through our Customs, because there is no law against it.

With the advent of Adolph Hitler as Chancellor, efforts to obtain supporters for the Nazi movement were redoubled in the United States. Campaigns were conducted, gigantic mass meetings held, literature of the vilest kind was disseminated and the short-wave radio was added to the effort.

Orders were issued in Germany and transmitted to the United States ordering certain lines of conduct in connection with this movement. Evidence shows, in one case, that when German officials ordered certain people in the United States to give up their membership in the Nazi Party of Germany or to resign from the Friends of New Germany, the head of the latter organization made a trip abroad at its expense to protest, which protest was made to party officials in Germany (pp. 71–145, D. C. 4).

There is ample evidence showing a dual allegiance to this country and to Germany on the part of those interested in this movement.

German steamship lines not only brought over propaganda, but transported back and forth certain American citizens without cost, for the purpose of having them write and speak favorably of the German nation. A German steamship company's records show that some of these persons received free transportation at the request of the German Ambassador "in the interest of the State." Members of the crews of these ships carried messages between party officials in Germany and leaders of the Nazi groups here (pp. 17–37, N. Y. 7).

It was quite a common occurrence for steamship companies to invite residents in this country to attend social parties on board ships while they were in port and persons attending these parties were addressed by representatives from Nazi organizations abroad on the subject of Nazism and the philosophies of the National Socialist German Labor Party.

It is also important to note that the conditions of membership in "The Friends of New Germany" were the same as membership in the National Socialist German Labor Party; that its principles were the same; that it permitted only those of so-called "Aryan blood", born in Germany or of German descent, to join, and that it was fashioned entirely along the lines of the Nazi Party of Germany; that it was receiving and recognized orders from Germany; that it was for all practical purposes, if not in fact, the American section of the Nazi movement of Germany, designed to influence, if necessary and possible, our governmental policies. The evidence conclusively shows that this movement in the United States is inconsistent with our principles of government (D. C. 4).

The membership lists of the Friends of New Germany showed a large number of aliens who, although they have resided in this country for a number of years, had never made an effort to obtain their first papers to become citizens. Yet, these self-same aliens sought to dictate to American citizens and to find fault with the American philosophy of government.

The following table of the membership of the "Friends of New Germany" in Chicago taken from sworn testimony given by the secretary of the organization shows clearly the preponderance of aliens in the organization:

Alien:		Naturalized:	
Germans	146	German birth	84
Austrian	2	Austrian birth	2
Swiss	1		
Total	149	Total	86
United States citizens, native born	2	Unknown, German birth	2
		Grand total	239

(Pp. 648–654, D. C. 6 II.)

Others who became naturalized evidently felt that this conferred upon them a dual citizenship. Some employees of the steamship lines, who are naturalized American citizens, went so far as to maintain a permanent residence abroad, to pay taxes abroad, and to have their families live abroad continuously (pp. 163–214, D. C. 6).

The organization known as "The Friends of New Germany", through a subsidiary organization, in July 1934, conducted so-called "youth summer camps" at different localities, at which camps nothing of American history or of American principles of government were taught, even to the children of American citizens of German extraction, to say nothing of the children of aliens.

On the contrary, the children were taught to recognize Chancellor Hitler as their leader, to salute him on all occasions, and to believe that the principles of government taught by him were superior to the principles of our Government.

At these camps the official language was German, the swastika flag was prominently displayed at the headquarters tent, and at morning and evening exercises the flag was saluted in Nazi style, and the director of the camp, in charge of these children, was an alien who displayed unusual ignorance of many of the principles of the United States Government, and whose personal allegiance was solely to the German Government and its present ruler (pp. 75–95 N. Y. 12).

An instance showing the close connection between the Nazi movement in this country and the Nazi Party in Germany, and of the close connection between the Nazi Party in Germany and the Government of that country, is the case of Ernst Berkenhoff. This man was a Nazi storm troop leader (captain) residing at Asslar, Germany. In September 1934 he applied to the foreign bureau of the Nazi Party for a 60-day leave of absence for the purpose of visiting the United States on business.

Documents in his possession showed that he was first instructed by the Nazi Party officers in Germany to report to the "local" of the party in New York City and the address given him in Germany at which to report was that of the Friends of New Germany in New York City. Subsequently, the party authorities in Germany wrote him that they found the party in Germany had no "local" in New York City and directed him to "report" to the consul general of Germany at New York City (pp. 41–67, N. Y. 12).

During the past 2 years this country has been flooded with propaganda material dealing with the Treaty of Versailles and also extensively devoted to defamatory statements, the purpose of which was to create racial and religious intolerance in the United States. The author and publisher of such propaganda was Dr. Otto H. F. Vollbehr, a citizen of Germany, who in recent years sold to our Government certain rare books and other incunabula for which he received the sum of $1,500,000.

Dr. Vollbehr testified before a subcommittee in New York City that he had paid many thousands of dollars of his own funds to circularize these various "memoranda." He also admitted furnishing Americans with material for lectures and articles to present a pro-Nazi point of view.

In the course of his testimony Dr. Vollbehr stated that he had been warned by Dr. Hans Luther, German Ambassador to the United States, not to "mix in American politics."

He further testified, under oath, that he did not intend to return to Germany for some time, that he would desist in his propaganda activities, and that the bulk of his funds were in Germany.

Investigators of the committee have found, however, that he left for Germany despite his testimony, within 10 days, and that while Vollbehr was in Germany, in January 1935, another "memoranda" of similar character was circulated in the United States from his address at Los Angeles.

Within recent weeks Vollbehr has again entered this country. He has been coming here for 35 years, and although for the past several years he has had an immigration visa, he has never seen fit to take out his first citizenship papers, and as a German citizen continues his propaganda efforts while in this country (pp. 703–727, D. C. 6 II).

The testimony also shows that the "Friends of New Germany" had a select committee, known as the "Uschla," appointed by the party leaders to hear all complaints against members for violations of the rules, regulations, and orders of the movement in the United States, and that some of the recommendations of such committee were forwarded to the proper officials in Germany for final action (pp. 10–41, N. Y. 12).

This report can only touch upon the highlights contained in thousands of pages of testimony.

From the evidence taken by this committee in its investigation of Naziism in the United States, it develops that all kinds of efforts and influence, short of violence and force, were used to obtain its desired objective, which was to consolidate persons of German birth or descent, if possible, into one group, subject to dictation from abroad.

When this committee was appointed the Nazi movement had made considerable headway, greater in its influence than its actual membership would indicate. Its efforts and activity, particularly with reference to its intolerance features, were disturbing.

The disclosures made by the committee not only have stopped their progress and caused the activities of certain German accredited representatives to this country to cease, but a distintegration of the movement has and is taking place. Efforts are still being made by the leaders of the movement but without the success that they heretofore enjoyed.

This committee condemns the establishment and the propaganda of the Nazi principles in this country. We are unalterably opposed to any individual or any group of individuals seeking to bring about discord among the people of this country, either as a reprisal or as a means of changing our form of government.

FASCISM

There have been isolated cases of activity by organizations which seemed to be guided by the fascisti principle, which the committee investigated and found that they had made no progress.

However, in the latter part of December evidence was received from sources worthy of credence, that would justify an investigation, if time and funds permitted, tending to show fascist activity by an Italian vice consul at Detroit, Mich.

This evidence was submitted in affidavit form, the originals of which have been sent to the State Department. The evidence submitted warranted and justified an investigation, which the termination of the committee (Jan. 3, 1935) did not permit. The chairman of the committee (Mr. McCormack) has conferred with the State Department in relation to the evidence submitted, and has been assured that an "energetic investigation is being made."

The committee has recently received evidence which justifies an inquiry showing interference by a consul of the Mexican Government assigned to San Bernardino, Calif., with the religious practices and religious freedom of some of our people.

This evidence has been submitted to the State Department and assurances have been given that an immediate inquiry will be made.

In the last few weeks of the committee's official life it received evidence showing that certain persons had made an attempt to establish a Fascist organization in this country.

No evidence was presented and this committee had none to show a connection between this effort and any fascist activity of any European country.

There is no question but that these attempts were discussed, were planned, and might have been placed in execution when and if the financial backers deemed it expedient.

This committee received evidence from Maj. Gen. Smedley D. Butler (retired), twice decorated by the Congress of the United States. He testified before the committee as to conversations with one Gerald C. MacGuire in which the latter is alleged to have suggested the formation of a Fascist army under the leadership of General Butler (p. 8–114 D. C. 6 II).

MacGuire denied these allegations under oath, but your committee was able to verify all the pertinent statements made by General Butler, with the exception of the direct statement suggesting the creation of the organization. This, however, was corroborated in the correspondence of MacGuire with his principal, Robert Sterling Clark, of New York City, while MacGuire was abroad studying the various forms of veterans' organizations of Fascist character (p. 111 D. C. 6 II).

The following is an excerpt from one of MacGuire's letters:

"I had a very interesting talk last evening with a man who is quite well up on affairs here and he seems to be of the opinion that the Croix de Feu will be very patriotic during this crisis and will take the cuts or be the moving spirit in the veterans to accept the cuts. Therefore they will, in all probability, be in opposition to the Socialists and functionaries. The general spirit among the

functionaries seems to be that the correct way to regain recovery is to spend more money and increase wages, rather than to put more people out of work and cut salaries.

"The Croix de Feu is getting a great number of new recruits, and I recently attended a meeting of this organization and was quite impressed with the type of men belonging. These fellows are interested only in the salvation of France, and I feel sure that the country could not be in better hands because they are not politicians, they are a cross section of the best people of the country from all walks of life, people who gave their "all" between 1914 and 1918 that France might be saved, and I feel sure that if a crucial test ever comes to the Republic that these men will be the bulwark upon which France will be saved.

"There may be more uprisings, there may be more difficulties, but as is evidenced right now when the emergency arises party lines and party difficulties are forgotten as far as France is concerned and all become united in the one desire and purpose to keep this country as it is, the most democratic, and the country of the greatest freedom on the European Continent" (p. 111 D. C. 6 II).

This committee asserts that any efforts based on lines as suggested in the foregoing and leading off to the extreme right, are just as bad as efforts which would lead to the extreme left.

Armed forces for the purpose of establishing a dictatorship by means of fascism or a dictatorship through the instrumentality of the proletariat, or a dictatorship predicated in part on racial and religious hatreds, have no place in this country.

OTHER ORGANIZATIONS

The committee has examined into the purposes and activities of many other organizations in this country. The bylaws and the membership applications of practically all of those investigated are of such a nature that any fairminded, law-abiding citizen who did not investigate their real purpose could sign without any qualms of conscience.

Investigation, however, has disclosed that many are in reality the breeding places of racial and religious intolerance and their financial statements show them to be petty rackets.

As an example of this type of organization, we cite the "Order of '76." This small group has been led into thoroughly un-American channels by its leader, who admitted that the organization had never been incorporated; that no books or records were kept; that no bank account existed; and that he had managed, after 2 years, to get 146 members. Its real and hidden purpose was racial and religious intolerance.

Some of these groups and organizations referred to under this general heading passed the incipient stage, as was the case of the Silver Shirts, founded by William Dudley Pelley and patterned after the Storm Troops of Germany.

For years Pelley, according to testimony, had been writing on metaphysical subjects, with 9 out of 10 of his followers being women, who gave him, and from whom he borrowed, varying sums of money, in one case receiving bonds valued at $14,000.

Early in 1933 he founded the Silver Shirts with headquarters at Asheville, N. C., a few days after Adolph Hitler became Chancellor of Germany. Pelley told people who testified that the idea was copied from Germany. Immediately his prolific writings changed from the sublime into violent, vitriolic, and scurrilous attacks against certain religious groups.

Evidence before this committee shows that overtures were made to Nazi groups and Nazi leaders in this country. Pelley had as his "foreign adjutant" Paul von Lilienfeld Toal, who helped make contacts with officials of German steamship lines by whom he was employed.

Pelley's weekly publication changed its entire tone at this time and became the mouthpiece for the Silver Shirts. Another more vicious weekly was started in Oklahoma, where State authorities told them to "get out."

Chapters of the Silver Shirts sprang up throughout the country, although at that time the organization was not incorporated. When the organization was incorporated, its structure was such that no member had a vote and the powers of dictator rested with Pelley on a self-perpetuating basis.

Evidence taken by a subcommittee at Los Angeles proved that many Silver Shirts at San Diego had been armed, that Government ammunition from North Island had come into their hands through nefarious methods and that a target range nearby was utilized for practice and maneuvers. In fact, two members

of the United States Marines swore that they had been asked to and did instruct the Silver Shirts (p. 1–25, Calif. 2).

Pelley's various ventures, both military and publishing, have been placed in bankruptcy. Recently, Pelley and his adjutant, Robert Summerville, were convicted in Buncombe County, N. C., of a felony, namely, violation of the Blue Sky Law of that State, for selling stock without authorization and registration.

Another of these organizations is the American Vigilante Intelligence Federation, of which Harry A. Jung, Chicago, is the founder, promoter, and honorary general manager.

Testimony of Jung's secretary, Miss Rose Peterson, taken at Chicago, stated "we have never gotten around to getting bylaws or electing officers." Her testimony and corroborating records showed that a solicitor had been paid 40 percent of all money he collected as his fee and that many nationally known organizations and individuals had contributed. The committee finds the contributors had no knowledge of the purposes for which the money was used.

Miss Peterson's testimony showed that Harry A. Jung and the AVIF had published and circulated great masses of literature tending to incite racial and religious intolerance.

Because this committee has seen the true purpose behind these various groups, it will lump together and characterize them as un-American, as unworthy of support and created and operated for the financial welfare of those who guide them and who did not hesitate to stoop to racial and religious intolerance in order to achieve their selfish purposes.

This activity your committee believes to be distinctly and dangerously un-American and we denounce, without qualification, any attempt, from any source, to stir up hatreds and prejudices against any one or more groups of our people because of either race, color, or creed. The guaranty of freedom of religion and the equality of all persons under the law is not only expressly written in our Constitution, but is of the very essence of American freedom, and any assault upon these guaranties is dangerous and un-American.

We believe that the surest safeguard for those fundamental principles of American liberty is an aroused and intelligent public opinion.

COMMUNISM

The resolution creating this committee was broad in its general terms instructing it to examine into all "subversive activities." Such an examination included an investigation into Communistic activities.

This committee confined its investigation to that period of time following the thorough inquiry made by the special committee, of which our colleague, Mr. Fish, of New York, was chairman. The inquiry made by Mr. Fish's committee was profound and comprehensive. In making its recommendations, this committee also gave consideration to the report made by the special committee above referred to.

This committee took the testimony of several prominent Communist leaders.

In December 1934 it held a series of public hearings at Washington, D. C., at which representatives from various organizations and agencies that have recently been investigating Communism presented statements of their findings, accompanied by one or more recommendations.

The Communist Party of the United States is not a national political party concerned primarily and legitimately with conditions in this country. Neither does it operate on American principles for the maintenance and improvement of the form of government established by the organic law of the land.

The nature and extent of organized Communist activity in the United States have been established by testimony and the objectives of such activities clearly defined. Both from documentary evidence submitted to the committee and from the frank admission of Communist leaders (cf. Browder and Ford, New York hearing, July 12, 1934) these objectives include:

1. The overthrow by force and violence of the republican form of government guaranteed by article IV, section 4, of the Federal Constitution.

2. The substitution of a soviet form of government based on class domination to be achieved by abolition of elected representatives both to the legislative and executive branches, as provided by article I, by the several sections of article II of the same Constitution and by the fourteenth amendment.

3. The confiscation of private property by governmental decree, without the due process of law and compensation guaranteed by the fifth amendment.

4. Restriction of the rights of religious freedom, of speech, and of the press as guaranteed by the first amendment.

These specific purposes by Communist admission are to be achieved not by peaceful exercise of the ballot under constitutional right, but by revolutionary upheavals, by fomenting class hatred, by incitement to class warfare, and by other illegal, as well as by legal, methods. The tactics and specific stages to be followed for the accomplishment of this end are set forth in circumstantial detail in the official program of the American Communist Party adopted at the convention held at Cleveland on April 2 to 8, 1934.

The "manifesto" and the "resolutions" incite to civil war by requiring one class "to take power" by direct revolutionary process and then assume dictatorship over the country in the manner followed by the Communists in the Union of Soviet Socialist Republics which is frequently mentioned as a guiding example.

In pursuance of the revolutionary way to power, the program instructs members of the party to obtain a foothold in the Army and the Navy and develop "revolutionary mass organizations in the decisive war industries and in the harbors." The trade unions should be undermined and utilized as recruiting grounds for revolutionary workers. How faithfully these particular injunctions have been executed was demonstrated by Navy officers appearing before the committee and by officials of the American Federation of Labor.

The American Communist Party is affiliated with the Third International, which was created by officials of the Soviet Government and is still housed in Moscow with governmental approval and cooperation. This affiliation is not one of general sympathy or broad uniformity of purpose and program; it is of a definitely organic character involving specific jurisdiction on the part of the governing body over the Communist Party of the United States.

The executive secretary of the Communist Party of the United States testified to this committee that his party was "a section of the Communist International"; that it participates in all the gatherings which decide the policies of the Communist International and sends delegates to the various conferences in Moscow. This admission is confirmed by the records available.

Because it constitutes a virtual plea of guilty to charges that have been made against the Communist Party of America, we submit in full the testimony of Earl Browder, general secretary of that party. This testimony was corroborated by James W. Ford, a member of the executive committee of that party.

"TESTIMONY OF EARL BROWDER

"(The witness was duly affirmed.)

"The CHAIRMAN. Please give your name and address.

"Mr. BROWDER. Earl Browder, 35 East Twelfth Street.

"The CHAIRMAN. Mr. Browder, will you state, please, your official position with the Communist Party in America?

"Mr. BROWDER. I am executive secretary of the central committee.

"The CHAIRMAN. Is there a central committee?

"Mr. BROWDER. There is a central committee.

"The CHAIRMAN. How many does that committee comprise?

"Mr. BROWDER. Twenty-nine members and six alternates.

"The CHAIRMAN. That central committee determines the policy of the party?

"Mr. BROWDER. Yes.

"The CHAIRMAN. And its affiliates in the United States?

"Mr. BROWDER. Between conventions.

"The CHAIRMAN. Between conventions. And the committee is elected at conventions?

"Mr. BROWDER. Yes.

"The CHAIRMAN. The convention is composed of delegates of the various organizations and affiliates throughout the United States?

"Mr. BROWDER. The convention is composed of delegates elected by districts at district conventions. District conventions are composed of delegates on a broader basis.

"The CHAIRMAN. And the National Communist Party—is that the name?

"Mr. BROWDER. The Communist Party of the United States.

"The CHAIRMAN. The Communist Party of the United States is affiliated with the Third International?

"Mr. BROWDER. It is a section of the Communist International.

"The CHAIRMAN. Is it in contact with the Third International?

"Mr. BROWDER. Yes.

"The CHAIRMAN. Constantly.

"Mr. BROWDER. I cannot say constantly.

"The CHAIRMAN. I mean, there is that contact?

"Mr. BROWDER. At intervals, yes.

"The CHAIRMAN. There is that contact between them?

"Mr. BROWDER. The American party as a section of this Communist International participates in all of the gatherings which decide the policies of the Communist International.

"The CHAIRMAN. And send delegates to the Third International and their various meetings?

"Mr. BROWDER. Yes.

"The CHAIRMAN. In other words, it is an affiliate? Would you call it a regional party of the Third International? I would rather you would put it in your own language.

"Mr. BROWDER. To give an exact idea, you cannot draw a strict parallel with other party organizations, inasmuch as it is a world party; a world party.

"The CHAIRMAN. But the Third International is the central body?

"Mr. BROWDER. Yes.

"The CHAIRMAN. In April 1934, was there a convention in Cleveland in the United States?

"Mr. BROWDER. That is correct.

"The CHAIRMAN. At that convention were certain resolutions adopted?

"Mr. BROWDER. That is correct.

"The CHAIRMAN. Have you copies of the resolutions, Mr. Browder?

"Mr. BROWDER. I have. This pamphlet contains all of the decisions; that is, the manifesto of the convention, the resolution on the present situation, and the tasks of the Communist Party, the lessons of economic struggles and tasks of the Communists in the trade unions, and a resolution on the winning of the working-class youth. These were the decisions of the Cleveland convention.

"The CHAIRMAN. On what page will we find the resolution that was adopted as a result of the passage of a similar resolution by the Third International in December 1933?

"Mr. BROWDER. Pages 35 and 36 of this pamphlet.

"The CHAIRMAN. That is the only one we are really concerned with now. This here is on pages 35 and 36 in the pamphlet.

"Mr. BROWDER. Yes.

"The CHAIRMAN. That resolution was adopted in the convention?

"Mr. BROWDER. Yes.

"The CHAIRMAN. Is it identically the same resolution that was adopted at the Third International?

"Mr. BROWDER. The resolution of the Third International is not in its entirety reproduced here.

"The CHAIRMAN. Is not in what?

"Mr. BROWDER. In its entirety reproduced, but reference is made to the thesis of the thirteenth plenum of the Communist International, and this resolution declares that this fully applies also to the United States.

"The CHAIRMAN. Was this resolution adopted as a result of the action of the thirteenth plenum of the Third International?

"Mr. BROWDER. No; I would not say that.

"The CHAIRMAN. In part?

"Mr. BROWDER. I would not say that.

"The CHAIRMAN. Well, in part was it adopted as a result of it?

"Mr. BROWDER. Well, I would say that it is fully in harmony with it and expresses its approval.

"The CHAIRMAN. Of the action of the Third International?

"Mr. BROWDER. Of the action of the thirteenth plenum.

"The CHAIRMAN. Were instructions received from the Third International with reference to the adoption of the resolution which they adopted in December 1933?

"Mr. BROWDER. No instructions; no.

"The CHAIRMAN. You knew of a resolution being adopted in the Third International in December 1933, did you not?

"Mr. BROWDER. Yes; this resolution was published by us in our official journal, the Communist, for February 1934.

"The CHAIRMAN. On what page, Mr. Browder?

"Mr. BROWDER. It begins with page 131 of this issue and continues to page 144.

"The CHAIRMAN. May we have this?

"Mr. BROWDER. Yes.

"The CHAIRMAN. I introduce this as an exhibit, entitled 'The Way Out,' and that part of it which is pages 35 and 36, I believe.

"Mr. BROWDER. Yes.

"The CHAIRMAN. And this book entitled 'The Communist,' and so much as relates to the pages which Mr. Browder has referred to.

"(The documents were marked 'Exhibits 1 and 2.')

"The CHAIRMAN. Both of these pamphlets will now be made a part of this record and will be marked 'Exhibits Nos. 27 and 28' of these hearings.

"(The two pamphlets were marked 'The Way Out, Exhibit No. 27,' and 'The Communist, Exhibit No. 28.')

"The CHAIRMAN. In January, did the executive committee of the Communist Party of the United States adopt a similar resolution to that which was adopted at the Cleveland convention?

"Mr. BROWDER. In January the central committee met and expressed its agreement with the resolutions adopted by the Communist International.

"The CHAIRMAN. So, in chronological order, what happened was in December, the thirteenth session of the Third International——

"Mr. BROWDER. That is right.

"The CHAIRMAN. Adopted a resolution, of which you were made cognizant?

"Mr. BROWDER. Yes.

"The CHAIRMAN. And of which movement the party in the United States was made cognizant?

"Mr. BROWDER. Yes.

"The CHAIRMAN. The executive committee in January 1934 adopted a resolution based along the same lines?

"Mr. BROWDER. Declaring its agreement with it.

"The CHAIRMAN. Declaring its agreement with it?

"Mr. BROWDER. With the contents of that document.

"The CHAIRMAN. That action in January, is it fair to assume that that action in January was the result of the action of the thirteenth session of the Third International in the preceding month?

"Mr. BROWDER. I think it would be more correct to say that it was a result of the fact that the leadership of the party in the United States was in agreement with the action that was taken.

"The CHAIRMAN. I want you to put it your own way. I want you to put it in the way that it occurred, but one followed the other?

"Mr. BROWDER. One followed the other.

"The CHAIRMAN. And the action at the convention at Cleveland in April was also a follow-up of the action of the Third International and the agreement of the leaders in the United States thereto?

"Mr. BROWDER. I think your formulation will perhaps narrow the understanding of the Cleveland convention too much.

"The CHAIRMAN. I am talking only so far as this particular resolution is concerned, but will you explain that? The action of the executive committee was in between conventions?

"Mr. BROWDER. Yes.

"The CHAIRMAN. Of course, that matter came up, I assume, in the regular convention?

"Mr. BROWDER. Yes.

"The CHAIRMAN. The regular convention confirmed the action of the executive committee?

"Mr. BROWDER. That is correct.

"The CHAIRMAN. Have you official minutes as to those actions?

"Mr. BROWDER. The official minutes are the documents contained in the pamphlet which I gave you, plus the official publication of the reports made to the convention. This would include in addition to the——

"The CHAIRMAN. We are concerned only with that limited part, that part to which I have confined my questions, the resolution, and those are copies of the special actions taken by the Third International in the case of the resolution printed in The Communist and of the convention in the case of the resolution adopted there, printed in the pamphlet entitled 'The Way Out.'

"Mr. BROWDER. Yes; that is substantially correct.

"Perhaps I should add that if you want the complete record of the convention you should add to that the two additional pamphlets, the report to the convention on behalf of the central executive committee, the general report, and the special report on the Negro question.

"The CHAIRMAN. May we have these?

"Mr. BROWDER. Yes.

"The CHAIRMAN. Thank you.
"Mr. DICKSTEIN. This central executive committee is located where?
"Mr. BROWDER. The members of the committee are in various places.
"Mr. DICKSTEIN. But the central executive committee, this one?
"Mr. BROWDER. The seat of the central executive is in New York City.
"Mr. DICKSTEIN. In New York City?
"Mr. BROWDER. Yes, sir.
"Mr. DICKSTEIN. And that body represents almost all communities wherein your party exists in the United States?
"Mr. BROWDER. Yes.
"Mr. DICKSTEIN. And when you talk about the report on the Negro question, what do you mean by that? What kind of a report is that?
"Mr. BROWDER. It is a discussion of the problems involved in the struggle for liberation of the Negroes from their special oppression in the United States.
"The CHAIRMAN. We do not want to go into any philosophy.
"Mr. DICKSTEIN. That is all.
"The CHAIRMAN. Could you furnish or have furnished a list of the organizations in the United States which comprise the Communist group in the country?
"Mr. BROWDER. You will find a complete report of it in the report to the eighth convention.
"The CHAIRMAN. I see; thank you. I do not know of any other questions. Do you, Senator?
"Mr. HARDWICK. I want to ask him one or two questions.
"This thirteenth plenum of the International was adopted at Moscow, was it not?
"Mr. BROWDER. That is right.
"Mr. HARDWICK. When?
"Mr. BROWDER. In December of 1933.
"Mr. HARDWICK. The New York committee, the central executive committee, I think you called it—is that right?
"Mr. BROWDER. That is right; central committee.
"Mr. HARDWICK. Approved that resolution when?
"Mr. BROWDER. In January.
"Mr. HARDWICK. In just about a month?
"Mr. BROWDER. About a month.
"Mr. HARDWICK. Were you present when the resolution was approved?
"Mr. BROWDER. I was.
"Mr. HARDWICK. How many members of the committee were present?
"Mr. BROWDER. I could not answer offhand. I would say——
"Mr. HARDWICK. Well I mean substantially. I do not care about whether you give it exactly or not.
"Mr. BROWDER. A substantial majority of the members of the committee.
"Mr. HARDWICK. A substantial majority. Was there any fight over the adoption of the resolution?
"Mr. BROWDER. There was no difference of opinion.
"Mr. HARDWICK. No difference of opinion. After which, you had your national convention at Cleveland I believe, did you not?
"Mr. BROWDER. That is correct.
"Mr. HARDWICK. When was that?
"Mr. BROWDER. In April.
"Mr. HARDWICK. April 1934?
"Mr. BROWDER. 1934.
"Mr. HARDWICK. Were you there?
"Mr. BROWDER. I was there.
"Mr. HARDWICK. Did that convention adopt a resolution approving this thirteenth plenum of the International?
"Mr. BROWDER. The resolution adopted in Cleveland substantially approves that resolution.
"Mr. HARDWICK. All right. Were there many people at that convention?
"Mr. BROWDER. There were a considerable number. I can tell you the exact number of delegates, if you wish, by referring to the record.
"Mr. HARDWICK. Yes; I would like to have it.
"Mr. BROWDER. There were 233 regularly elected voting delegates.
"The CHAIRMAN. Were there any alternates?
"Mr. BROWDER. There were some 237 additional nonvoting delegates.
"Mr. HARDWICK. Something like——
"Mr. BROWDER. Four hundred and seventy, to be exact.

"Mr. HARDWICK. Did that convention endorse this thirteenth plenum in practical unanimity?

"Mr. BROWDER. Yes; complete unanimity.

"Mr. HARDWICK. You have already indicated to the chairman where those things will all be found in the record?

"Mr. BROWDER. Yes.

"Mr. HARDWICK. That is all.

"Mr. DICKSTEIN. How many members do these 470 delegates represent?

"Mr. BROWDER. The regular voting delegates represent the dues-paying membership of the party.

"Mr. HARDWICK. How many members?

"Mr. BROWDER. Which at that time was approximately 24,500.

"Mr. HARDWICK. In the United States?

"Mr. BROWDER. Yes.

"Mr. HARDWICK. That is all.

"Mr. BROWDER. The other delegates represented various nonparty organizations.

"Mr. HARDWICK. That is, the 237?

"Mr. BROWDER. Yes; the 237.

"Mr. HARDWICK. How much did they represent?

"Mr. BROWDER. The total number of the membership of which, I could not state with any exactitude. It would run into some few hundred thousands.

"Mr. HARDWICK. They are members of the Communist Party, too; the delegates or the alternates that represented in that convention?

"Mr. BROWDER. Not all; not all.

"Mr. HARDWICK. They were representing the same principle as the 233 delegates? I mean the basic principle of communism?

"Mr. BROWDER. Certainly. Their presence at the convention is itself an indication that they support the general policies but they are not organizationally——

"Mr. HARDWICK. Communists?

"Mr. BROWDER. Not all of them.

"Mr. HARDWICK. I mean affiliated.

"Mr. BROWDER. Some of them are; some are not.

"The CHAIRMAN. Mr. Browder, when you say that there is an agreement, the fact that one succeeded the other, is it not fair to assume that in part the action of the thirteenth session of the Third International was a contributing factor, at least, to the adoption of these resolutions by the national committee at the convention?

"Mr. BROWDER. Certainly. There is a distinct political continuity throughout all these actions.

"The CHAIRMAN. I think it is fair to make this statement, so there will be no misunderstanding, Mr. Browder and Mr. Ford were called into executive session because they had to leave on important business, with the understanding that at the proper time, when the committee saw fit, his evidence could be made public. I want to make that statement so that there will be no misunderstanding at the public hearing, if and when the evidence is made public, to the fact that they are absent. It is with a distinct understanding with the members of the committee in this respect.

"Mr. BROWDER. I would like to make a request that if any of the questions involved in these statements are matters of controversy or become the basis for any conclusions of the committee, that we be permitted to give further evidence with regard to them.

"Mr. HARDWICK. Let me say this, Mr. Chairman: It does not seem that is necessarily involved. We just want to show by you and Mr. Ford, too, if you think it is necessary, although I do not think it is necessary to swear Mr. Ford, that your committee in New York, your executive committee, passed a resolution endorsing this thirteenth plenum, and that your convention in Cleveland did the same thing. Those are just bare facts.

"Mr. BROWDER. Matters of public knowledge and record.

"Mr. HARDWICK. Yes. They have been printed in the newspapers, but we thought we had better get some direct evidence.

"The CHAIRMAN. I can assure you gentlemen that the Chair will try to see that eminent fairness is extended to every person appearing before the committee, either in executive or public hearing. The committee is just asking questions on a very narrow field; and if there is any extension beyond that field, the committee will naturally see that the rights of every person are protected.

"You are executive secretary, as I understand it?

"Mr. BROWDER. General secretary.
"The CHAIRMAN. You have charge of all the records?
"Mr. BROWDER. I have charge of the national office.
"The CHAIRMAN. The national office?
"Mr. BROWDER. And I am an executive of the central committee.
"The CHAIRMAN. If later the committee desires, would you cooperate in every way possible with the examination of the records and the accounts?
"Mr. BROWDER. Yes.
"The CHAIRMAN. Thank you.
"(Witness excused.)

"TESTIMONY OF JAMES W. FORD

"(The witness was duly affirmed.)
"The CHAIRMAN. You live where, Mr. Ford?
"Mr. FORD. 27 West One Hundred and Fifteenth Street.
"The CHAIRMAN. Are you an official in the Communist Party of the United States?
"Mr. FORD. I am an organizer of the Harlem section of the Communist Party, and a member of the central committee.
"The CHAIRMAN. You have heard Mr. Browder's testimony?
"Mr. FORD. Yes.
"The CHAIRMAN. Do you agree with the testimony which he has given as to the adoption of the resolutions?
"Mr. FORD. Yes; the testimony.
"The CHAIRMAN. You agree in other respects about the continuity of the happening of the adoption of those resolutions?
"Mr. FORD. Yes.
"The CHAIRMAN. That they are all official actions of the thirteenth session of the Third International and of the executive committee and of the convention at Cleveland?
"Mr. FORD. That is as Mr. Browder has said, the continuity of the thirteenth plenum of the Third International.
"The CHAIRMAN. Yes; and that one followed the other?
"Mr. FORD. Yes.
"The CHAIRMAN. And that they are all official acts?
"Mr. FORD. Yes; in our convention.
"The CHAIRMAN. Are there any questions you want to ask Mr. Ford now?
"Mr. HARDWICK. No.
"(Witness excused.)"

This relationship and responsibility was further demonstrated by the Communist Party itself in its central organ, the Daily Worker, on January 6, 1934. That publication reproduced on that occasion a telegram of congratulation and approval of Communist activities in the United States, signed by the presidium of the executive committee of the Communist International, received by the Radio Corporation of America and delivered from its branch office at 28 East Seventeenth Street, New York City. The text reads as follows:

DAILY WORKER,
New York.

Warmest fraternal greetings to the Daily Worker on its tenth anniversary. The Daily Worker has been the only American newspaper that has vigorously and boldly defended the interest of the workers and farmers, combating the treachery of the Socialists and trade-unions bureaucrats, uncompromisingly fighting against white chauvinism and all forms of oppression of Negroes, as well as fighting decisively against imperialist war.

The presidium of the executive committee of the Communist International welcomes the efforts of the Daily Worker to become a real collective agitator and organizer of the workers' struggle for the interests of the working masses, establishing close contacts with the masses in the factories, broadening its network of workers' correspondence, and securing a large number of workers in the task of supporting the paper and increasing its circulation, thus becoming the standard bearer in the struggle of the great masses of the American working class.

(Signed) PRESIDIUM E. C. C. I.

Some of the instructions from Moscow which have had the approval of the Communist Party in this country are:

1. In carrying out these tasks the Communists must utilize all legal possibilities to develop mass work and to link up legal and illegal work.

2. There is no way out * * * other than the one shown by the October Revolution * * * confiscation of banks, of the factories, mines, transport, houses * * * stocks of goods * * * lands, * * * etc., etc.

3. The plenum of the executive committee of the Communist International obliges all sections * * * for the revolutionary preparation * * * for the impending decision * * * battles for power.

YOUNG COMMUNIST INTERNATIONAL

The section of the Communist International designed to reach young people in every country is known as the "Young Communist International." This is an integral part of the Communist International at Moscow. Section 35 of the constitution and rules of that body reads:

"The International League of Communist Youth (Communist Youth International) is a section of the Communist International with full rights and is subordinate to the E. C. C. I."

The E. C. C. I. mentioned in this paragraph is the executive committee of the Communist International. (See p. 96 of pamphlet entitled "Program of the Communist International.")

Being an integral part of the World Communist Party, the Communist Youth International has the same objectives and seeks to carry out the same methods as the International itself.

Many of the citizens appearing before this committee have designated particular and emphatic attention toward an alleged violation of one of the conditions of the agreement between this country and Soviet Russia that preceded Russian recognition by this country.

In the fourth paragraph of the pledge given to this country by Maxim Litvinoff on behalf of Soviet Russia, it was covenanted that Soviet Russia was—

"not to permit the formation or residence on its territory of any organization or group, and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group, which has as an aim to overthrow, or the preparation for the overthrow of, or the bringing about by force or a change in the political or social order of the whole or any part of the United States, its Territories or possessions."

The date of this pledge was November 18, 1933. Despite this pledge, about the middle of December 1933, within a month after this pledge by Maxim Litvinoff and his government, the executive committee of the Communist Internationale, sitting at Moscow, Soviet Russia, adopted resolutions of the "Thirteenth Plenum of the Executive Committee of the Communist Internationale," which are applicable to the whole world, and of course to this country, which stated:

"There is no way out of the general crisis of capitalism other than the one shown by the October revolution. (In Soviet Russia when the Communists overthrew the then existing government of Russia by force.) Via the overthrow of the exploiting classes by the proletariat, the confiscation of the banks, the factories, the mines, transport, houses, the stock of goods of the capitalist, the lands of the landlords, the church, and the crown."

This resolution was approved and adopted on January 16–17, 1934, by the Central Committee of the Communist Party, at New York City, and by the National Convention of the Communist Party at Cleveland, Ohio, in April 1934, at which convention there were present 470 voting and associate delegates.

The secretary of the Communist Party, Earl Browder of New York City, declared that the Communist Party of the United States was a branch of the World Communist Party; further there was complete accord and a direct political continuity between the executive committee of the Communist Internationale and the party in the United States.

This resolution plainly and emphatically advocated "the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in the social or political order of the whole or any part of the United States, its territories or possessions."

This committee does not believe that the Communist movement in this country is sufficiently strong numerically nor an influence to constitute a danger to American institutions at the present time. Its increase in activity during the past year is plain evidence that unless checked, such activity will increase in scope and interferences so that they will inevitably constitute a definite menace. It is the duty of government to check and control, through appropriate legislation, the illegal actions and methods of such movements, without regard to the

improbability of attainment, and to protect itself and its loyal citizens against such subversive attempts.

The oppositions of the philosophies of communism and the American ideals of democracy are so direct and so fundamental that they cannot exist together. Communism, moreover, is of foreign origin and is directed by an alien organization outside of the United States.

The record shows that invariably Communistic agitation does not always lead to a realization of their objective, but instead results in the establishment of a dictatorship.

It is essential to understand in considering the subject that the Communist Party of the United States is not a political party in the true American sense.

Our own political parties are strictly domestic in their scope and purpose. They have no affiliations of any kind with similar groups in any foreign country. The truly American political party provides a mechanism by which citizens having a certain community of opinions elect their own candidates for public office and formulate the policies to which the candidates are pledged to pursue if and when elected.

Under our political party system any citizen having proper residential qualifications cannot be denied the privilege of joining a party nor can he be expelled from it. He is not even bound to vote for the candidates of his own party; in truth, under the American system of parties the initiative rests wholly with the individual and assures him complete freedom of political actions.

Opposed to our present form of government we see the un-American character of the Communist Party in the United States. It is a party recognized on an international scale, governed and controlled by a constitution and rules emanating from the "Communist Internationale," with headquarters at Moscow in the Soviet Union, and dedicated to the overthrow of government by violence and force.

The program of the Communist Internationale plainly sets out:

"The Communist Internationale—the International Workers' Association—is a union of Communist Parties in various countries; it is a world communist party."

The Communist Party of the United States is a section of this Internationale. As such, it is subject to the control and direction, first, of the World Congress of the Communist Internationale and, second, of the executive committee of that body. The International control of the Communist Party of the United States is intimate, membership in that party being open only to—

"those who accept the program and rules of the given Communist Party and of the Communist Internationale, who join one of the basic units of a party, actively work in it, abide by all the decisions of the party and of the Communist International, and regularly pay party dues. (See par. 3 of the constitutions, p. 88.)"

It will be observed, therefore, that stringent conditions are imposed upon the party membership which are wholly foreign to the American conception of political organization. A Communist Party member here is not simply an enrolled Communist who gives intellectual assent to its political and economic program. He must be an active worker, bound to accept and carry out promptly the orders issued to him by superior party committees, the chief of which is in a foreign country, whether he likes such orders or not. On this latter point, the constitution of the Communist Internationale is equally explicit. We quote from paragraph 5 of the constitution:

"Party questions may be discussed by the members of the party and by party organizations until such time as a decision is taken upon them by the competent party committees. After a decision has been taken by the congress of the Communist Internationale, by the congress of the respective sections, or by leading committee of the Comintern, and of its various sections, those decisions must be unreservedly carried out even if a section of the party membership or of the local party organizations are in disagreement with it."

It should be noted at this point that membership in the Communist Party of the United States is not limited to American citizens but is equally open to aliens. Enough has been said to show that the Communist Party of the United States is unlike any strictly American party. It is, in fact, an exclusive society of dues-paying members holding its charter from an international body, subject to disciplinary measures adopted by that body. It is a group of individuals, both citizen and alien, acting in part under alien orders, each member being active in a basic unit of the party, which unit is described as—

"the nucleus in the place of employment (factory, workshop, mine, office, store, farm, and so forth) which unites all the party members employed in the given enterprise." (See constitution, sec. 4, p. 89.)

We direct attention to the membership dues book of the Communist Party which again certifies and affirms the statements and requirements contained in the constitution itself. That is what every member must sign and he must take those obligations. There is no allegiance to the United States Government but, to the contrary, positive opposition thereto.

The citizen voter who goes to the polls and enrolls under the Communist emblem does not thereby become a member of the Communist movement of the United States. Therefore, when it is shown that the membership of the Communist Party is approximately 24,000, it merely means that there are 24,000 duly accredited agitators and leaders who are obeying the instructions from the Moscow authority. (See N. Y. 7 also D. C. 6 I and II.)

In handling the subject of nazism, fascism, and communism, it can readily be seen that attempts have been made and are being made from abroad and in some instances by diplomatic and consular agents of foreign countries to influence the political opinions of many of our people.

It can plainly be seen that efforts have been made to organize some of our citizens and some aliens who have been admitted for permanent residence. Evidence has been disclosed to show a desire to impede the assimilation of aliens with the American people. Such conditions should not be tolerated.

It is contrary to the interest of our people, and of the aliens who are here for permanent residence, that the process of assimilation should be obstructed or delayed by any influence from abroad. Such efforts are extremely objectionable when they are assisted or subsidized by foreign governments or nationalistic organizations.

While we recognize and respect the inherent feelings that one has for the land of his birth or that of his forebears, we demand that there be only one allegiance and that to the United States.

Whatever may be the result elsewhere, the constitutional rights and liberties of American citizens must be preserved from communism, fascism, and nazism. The only "ism" in this country should be Americanism.

To the true and real American, communism, nazism, and fascism are all equally dangerous, equally alien and equally unacceptable to American institutions.

Consequently, in making its recommendation for the enactment of such statutes as shall enable the Government to control all such movements, whether they come from the left or the right, your committee has exercised extreme care and caution to protect the constitutional rights of any individual.

For instance, later in this report will be included the recommendation that Congress shall make it unlawful for any person to advocate such systems in a manner that incites to the overthrow of our Government by force and violence.

The prohibition of that kind of conduct is one of the essential powers of government, necessary for its own preservation. Under the constitutional guaranty of free speech any person will still be at liberty to advocate the change of our Government in the orderly manner prescribed by our Constitution and laws, and by consent of the people.

The moment he advocates its accomplishment by force and violence, and the substitution of the bullet and the bomb for the ballot, he becomes an enemy of our social and political order, a criminal, and he ought to be dealt with as such. Freedom of speech does not authorize insurrection or rebellion against the Government.

Liberty does not mean license.

RECOMMENDATIONS

In concluding its report the committee submits the following:

1. That the Congress should enact a statute requiring all publicity, propaganda, or public-relations agents or other agents or agencies, who represent in this country any foreign government or a foreign political party or foreign industrial or commercial organization, to register with the Secretary of State of the United States, and to state name and location of such foreign employer, the character of the service to be rendered, and the amount of compensation paid or to be paid therefor.

2. That Congress should enact a statute conferring upon the Secretary of Labor authority to shorten or terminate the stay in this country of any visitor

admitted here under temporary visa, whenever in the judgment of the Secretary such visitor shall engage in the promotion or dissemination of propaganda or engage in political activity in the United States.

3. We recommend that the Department of State, in collaboration with the Department of Labor, negotiate treaties and agreements with foreign nations by which such nations shall agree to receive back any person entering this country from such foreign nation at any time such immigrant shall become subject to deportation under our laws.

4. That Congress should make it unlawful to advise, counsel, or urge any member of the military or naval forces of the United States, including the reserves thereof, to disobey the laws or regulations governing such forces.

5. That Congress should enact necessary legislation so that the United States attorneys outside of the District of Columbia can proceed against witnesses who refuse to answer questions, or refuse to produce documents and records, or refuse to appear or who in any other manner hold in contempt the authority of any Congressional committee vested with the powers herein described, at any time during the official life of the committee.

6. That Congress should make it an unlawful act for any person to advocate changes in a manner that incites to the overthrow or destruction by force and violence of the Government of the United States, or of the form of government guaranteed to the several States by article IV, section 4, of the Constitution of the United States.

Respectfully submitted.

JOHN W. MCCORMACK,
Chairman,
SAMUEL DICKSTEIN,
CHARLES KRAMER,
THOMAS JENKINS,
J. WILL TAYLOR,
U. S. GUYER.

Mr. MCCORMACK. You will note that I was pressing the question to show the relationship, that there was a direct relationship. And it happened in the early 1930's that there was a meeting of the 13th Plenum of the Third International. The resolutions they actually adopted were adopted at the next convention of the Communist Party, word for word, or the next meeting of the Communist Party, of the so-called convention, if you call it that, of the Communist Party of the United States, I repeat, word for word, and we were pressing on that; and you will find here an admission on the part of Earl Browder that the resolution adopted by the 13th Plenum of the Third International was adopted word for word by the next national meeting—I do not like to dignify it by the word convention, because that is connected with American political parties—the next national meeting of the Communist Party of the United States, which they adopted word for word. You will find some very interesting testimony here on that. And finally, after a number of questions were asked him, he was asked by me this one final question:

The CHAIRMAN. Mr. Browder, when you say there is an agreement, the fact that one succeeded the other, is it not fair to assume that, in part the action of the 13th session of the Third International was a contributing factor, at least, to the adoption of these resolutions by the national committee at the convention.

That was the national committee of the Communist Party at the convention.

Mr. BROWDER. Certainly. There is a distinct political continuity throughout all these actions.

Now the word "political" is not in the sense of American politics; it is in the sense of a school of political science, which is the way of death, which communism represents. And the word "political" on the international level is connected with the Third International. It is con-

trolled by the Communist Party of the Soviet Union, as we all know, which, in turn, is the backbone and the strength of the oligarchy in the Kremlin which controls the people of Russia and has this dominating influence upon the other people.

Now, there is an answer. And from that, I believe I could make a judicial finding as we did, that this was an international conspiracy in 1934, based right on the answer of Earl Browder, the head of the Communist Party in the United States, when he said, "Certainly. There is a distinct political continuity throughout all these actions."

And, you can look at the previous questions and see where myself, other members, and our counsel, former United States Senator and former Governor Hardwick of Georgia, a great American, one of the greatest Americans I ever met, and we were pressing Browder, showing the relationship, the direct relationship between the Third International and the Communist Party and this agency, a part of the Third International, the world movement and the agents in this country of the world movement.

Then the testimony of James W. Ford, which was very brief, because he subscribed to everything that Browder had testified to, and he said that he would testify the same way, so we have in here the evidence about the instructions and their purpose. And you have in here the evidence concerning the Communist International.

I do not have to go into all of it. But we made recommendations at that time, and that represented a decided step forward in meeting this monument in the United States. There was very little support to my efforts. I do not say that in the critical sense, because public opinion regarding this matter was not aroused to the potential danger of communism here on the domestic level or from the world angle.

And you will remember at that time, 1934, the only real law on the statute book was the conspiracy law, where two or more people conspired to overthrow the Government by force and violence, and it was pretty difficult to establish conspiracy, not only conspiracy itself, but the overt act, and for all practical purposes, the law was a dead letter statute.

My committee thought that certainly any individual advocating, willingly and knowingly advocating, the overthrow of the Government by force and violence was guilty of such action that should be made a crime. And I never had any doubt there.

Mr. GRAHAM. Will you pardon the interruption while I make this announcement concerning the taking of pictures. Our custom is to allow pictures to be taken at the beginning or at the close of the hearing, but not during the time the witness is testifying.

Mr. MCCORMACK. There was, in my opinion, 1934, evidence justifying the conclusion that conditions were just as aggravated then as they are now, were as acute then as they are now, with some of us seriously considering the enactment of a law outlawing this movement.

In 1934, we made decided steps forward in our recommendation. We also found at that time that the Communists could go into any camp, Army camp or Navy camp in peacetime and distribute their Communist literature, and there were no laws, no authority, no power to stop it. We made recommendations to give the Secretary of the Navy and the Secretary of the Army the power to meet that situation by regulation. All of these bills received, of course, servere opposition, but we finally got them enacted into law.

We also found that when a special committee went outside the District of Columbia and summoned anyone to appear before it, that if they refused to produce books and records, that you could not do anything about it. The law was then that such refusal would only violate the law if such a committee was meeting actually in the District of Columbia. So we recommended changes in that law which was amended.

There is no question, in my opinion, but what we are justified on the evidence in passing legislation outlawing the Communist Party in America. There is no question but what the evidence, is my opinion, is complete in that direction. The only question is, has communism changed? I see no change in the purpose of communism. Only the other day, on March 23, in the New York Times, I picked up a news item which interested me—it may not interest a lot of people, but it interested me, because I am always looking to see if there is any change in the origin of communism, the origin of hate and destruction, and I see no change today.

There was a meeting for the first time in 5 years, several years, of the Young Communist League, in Moscow. And there was at that meeting the stern insistence that there were too many of the members turning away from the attack on God; that they were going to church, and who was there? Malenkov. It was bad enough to read of this meeting as a news item, for me, interested particularly in the light of the question of whether there was any change in the origin of communism, and if Malenkov had not been there, it would have been bad enough but with Malenkov in attendance, head of the oligarchy which controls the Soviet Union, the present head of the oligarchy which controls the Communists in the Soviet Union, that added greater significance to me.

Mr. WALTER. Mr. McCormack, while you agree that there is no change in the objective or the purposes of communism, there has been a great change in the followers of this ideology? Back in 1935, there were a lot of well-meaning people who did not fully appreciate the extent of this conspiracy, but I have come to the conclusion, since Korea, that the type of people who subscribe to communism in the United States are hard-boiled politicians; they are no longer the idealists or the person who is groping for a different solution to problems.

Mr. MCCORMACK. I thoroughly agree with you, and I do not say that just to say yes. We have got to consider that in 1931 and 1932, when you go back into it historically that there were many people in a disturbed state of mind. At that time, and some of you have seen the testimony, I am sure, that there were 24,500 actual card-carrying members in the Communist Party but there were about 200,000 other members of the other organizations that were represented at this what-they-call a convention. You will find it broken down into delegates, the actual delegates, Communist delegates, and the delegates representing the other organizations. Then there were quite a few people who were do-gooders. Their hearts were filled with compassion for suffering and they thought the quickest way to bring relief around was the economic way, what they thought was an economic communism, without believing in the doctrinaire aspects of it. But later they realized, when they were drawn into the gravity of communism, for all practical purposes, they realized it produced the same results as if it were in fact a regular communism

I think we have reached the hard-core section pretty well, and I thoroughly agree with what Congressman Walter has said in that respect.

Mr. FEIGHAN. Do you not believe, Mr. McCormack, that the evidence that has been deduced within the past decade shows conclusively that this idea of communism being used only as an instrument to increase living conditions and standards, is absolutely a myth?

Mr. MCCORMACK. It always was, and it always has gone into such activities for the purpose of furthering communism; a part of their plot and plans to present communism as one movement throughout the world and to make their greatest appeal among those in areas suffering from economic distress and widespread need and sickness.

And there have been some people who have suffered so long they will take a chance, any chance, in the hope that it will bring some improvement, without realizing they are jumping from the frying pan into the fire. Of course, communism, with all of its activities, as you say, is a myth. Its whole purpose is to infiltrate, concentrate, and get control and then let the true purposes of communism assert itself.

Now, I see no change. We know the world of today. I am not testifying from the angle of alarm. I have every confidence in the spirit of America; I have every confidence that when America is doing the right thing that communism can never prevail in its effort to get control of the entire world and to dominate and enslave all people. In my opinion, communism, in fact, is that. And I think I get the distinction in mind that Congressman Walter has referred to.

A Communist, in fact, is a person possessed with the mind of a world-killer. We have got to realize that. They are out to kill all civilizations, all people, all countries, who do not agree or submit, and they will use any means they can. We have got to realize that we are dealing with that force, individuals who are Communists in fact, and the collective results of the movement, as I term it, a way of death.

So I think, frankly, gentlemen of the committee, and I have given a lot of thought to this, the time has arrived when legislation to outlaw—let us meet this issue—that legislation should be enacted to outlaw the Communist Party.

I recognize the power of driving them underground, and I think you gentlemen should consider that. I have. I recognize that there are fine men and women who feel that you would drive them underground and it is better to keep them open and exposed. I have considered that. It has potent influence upon my mind and has over the past years, but I think the potency has gone by. And, I am appearing here today to give you gentlemen my opinion for whatever it might be worth and also my experience, and my observation of the minds of the Communists, and to present them to you for your consideration, and to take the position that the time has arrived when we ought to meet the issue outright and outlaw the Communist Party.

Mr. GRAHAM. Thank you very much, Mr. McCormack.

Mr. Hyde has a question.

Mr. HYDE. Just this question, Mr. McCormack: Under the Smith law and under some of the State statutes, similar to the Smith law, such as the law we have in Maryland, which was passed a few years ago, as you recall, it makes it a crime to advocate, aid, abet, or teach

the overthrow of Government through force and violence. Is that correct? Is that similar to the Smith Act?

Mr. McCormack. Well, that is in substance. I think the words "knowingly and willingly" were used.

Mr. Hyde. Yes.

Mr. McCormack. "Knowingly and willingly" I think are the words that were in my recommendations, because back in 1932 or 1933, somebody might have been having a hard time getting a job and at that time in desperation, he might say something, and I want to put the burden of proof if possible, if humanly possible, upon the Government.

Mr. Hyde. What I am getting at is this: We have the statute, the Federal statute, and similar statutes, in many States and then we say that we recognize as a matter of fact, that the Communist Party is an organization which does knowingly and willingly advocate, aid, abet, and teach the overthrow of Government by force and violence. Would not, with the law we now have on the statute books, mean that membership in the Communist Party itself would be a crime?

Mr. McCormack. Yes—as long as he is a Communist. There is nothing to stop any person who is willing to advocate within constitutional means, a change in our form of government from doing so.

Mr. Hyde. I understand that, but what I am getting at is this: We have laws, Federal and State laws, which make it a crime to do these things you have just referred to.

Mr. Walter. I think I might answer that question, Mr. Hyde, by calling your attention to the so-called Smith Act. It is limited to one who knowingly, willingly advocates, abets, advises, and teaches the thing. All of those things are factual and what we are trying, at least, in the bill, I would think, was to make the pupil as guilty as the teacher.

Mr. Hyde. Will the gentleman yield?

Mr. Walter. Certainly.

Mr. Hyde. What I am trying to get at is this: If it is a crime to do those things, and if we recognize as a matter of fact that the Communist Party itself does those things, I think that membership in the Communist Party is in fact, of itself, a crime.

The point that I am leading to, Mr. McCormack, is this, whether or not in view of that situation, that legal situation, would it be necessary to outlaw the Communist Party in order to get at and get rid of the Communists; would it nevertheless be necessary?

Mr. McCormack. I think it would. I do not think that being a member of the Communist Party itself today is a crime. Where certain organizations are put under prescribed lists, you are getting somewhat close to the situation, but we have not gone to that extent.

There is no question but what communism is an international conspiracy against all governments that are still free, and without reference to ourselves, against our Government. I do not think that has to be argued. The only question is, whether or not, under the circumstances and conditions, we should enact a law that will outlaw the Communist Party in the United States, and that includes membership therein; that means if you outlaw the party and that means being a member of it would constitute, in effect, the offense itself.

Mr. Hyde. What I was getting at was whether or not we have not, in effect, already done so by means of these dozen or more statutes.

Mr. McCormack. I would not think so.

Mr. HYDE. Thank you very much.

Mr. GRAHAM. Miss Thompson?

Miss THOMPSON. I would like to ask Mr. McCormack if he knows whether or not Earl Browder was American born?

Mr. MCCORMACK. My recollection is that he is.

Mr. GRAHAM. He was born in Kansas.

Miss THOMPSON. His wife was born in Russia; was she not?

Mr. MCCORMACK. I would not want to answer that from memory, because I do not want to put anything in evidence that I cannot testify to as a fact. If he so testified and I asked him the question, I would accept his testimony as to where she was born, but I would be quoting his testimony. But I cannot testify to it of my own knowledge.

Mr. GRAHAM. Are there any further questions by members of the committee?

I would like to ask you this question: When testimony was being adduced relative to our immigration laws, there was quite an insistence that we differentiate between the foreign-born Communists, persons who joined the Communist Party under economic pressure in order to obtain food, for instance, as contrasted with those who joined in the United States, willingly accepting communism.

Now, keeping that in mind——

Mr. MCCORMACK. Let me see if I understand your question. You mean the contrast was between those abroad who had embraced communism under economic pressure——

Mr. GRAHAM. And under the stress, facing starvation, and in order to leave, simply accepted it as a means until they could get out from that country; that is, differentiating between that group and the class of Americans who willingly accept communism voluntarily as a political faith. Have you given any thought to that matter?

What we have been trying to do is to make sure that that question has been developed in consideration of previous bills, as between the person who has said that he was, under the stress of circumstances, a member of the Communist Party but that now he is no longer such; that he is now impressed with the principles of freedom, and my question is whether you had given any thought to such a differentiation as that?

Mr. MCCORMACK. Well, I would give it as a curbstone opinion now, a curbstone opinion, of course, based upon years of study and experience, which is the result itself, naturally, and I would say that if I were on the subcommittee that I would weigh each individual case upon its merits and the facts. And if I were satisfied that a person had subjected himself while Hitler was in control, for example, outwardly appeared to a degree, I would recognize the first law of human nature is self-preservation with all of us, and none of us can escape that. I would always have in mind that the first law of human nature is one of self-preservation, and that applies to others as well as myself. It is always a hard question to pass on, but I think each case would have to be decided on the questions of fact.

Mr. GRAHAM. One of the questions we often hear is this: Is a person once a Communist always a Communist, or do they ever recant?

Mr. MCCORMACK. Oh, I do not know. I cannot say. I have known people in my time who, when I was investigating them, that were leaders in certain of the higher activities of our country in the field

of education and even in the field of religion who were what we would say today in the fellow-traveler class. They were not Communists. While in that state of mind, probably, they were influenced by a desire to help people who were in distress, and to do it overnight, and who thought perhaps they could do it through communism.

The result of what they did was the same as if they were Communists in fact, but they were not Communists. And I have seen them among those that we looked into. There were many different stages. Then there is another class of persons, persons who could not get a job, and whose wives and children were in the same situation, and some of them, in times of desperation, did things, and when conditions improved, economic conditions got back to normalcy, they came back. So the bald proposition that once a Communist always a Communist—I cannot say that. But I will say that once a Communist in fact, the hard-core Communist, as Congressman Walter has referred to it, and properly so, then when they recant, and I am glad to see them do so, I think they should give pretty good evidence to prove that there is a sincere repentance.

Mr. GRAHAM. The next question is this: You recall a few days ago Mr. Busbey introduced into the record a list of some 564 persons who had invoked the fifth amendment, refusing to say whether they had ever been Communists or not.

Mr. MCCORMACK. I do not want to get into that discussion today; but if anybody asked me if I were a Communist, being the kind of American I am, I would throw it right back in their face, and I would say so, if I were not a Communist.

I recognize that the fifth amendment to the Constitution is a very important amendment, not just for Communists, but for all Americans; otherwise we might find ourselves developing into a sort of police state; but if anybody asked me, when my Americanism is involved, the sort of American type of citizen that I am, I would hurl it right back in their face, if they asked me that question, and I would be glad to do so; I would resent the suggestion in such a question that I was a Communist. But, as I say, when people invoke the fifth amendment, they have a constitutional right to do so, and that is a constitutional provision which I recognize, but I am entitled to have my own personal views about it.

Mr. WALTER. It might be of interest to you to know, Mr. McCormack, that since I have been a member of the Un-American Activities Committee, every one of these people Mr. Busbey listed, who invoked the provisions of the very Constitution which they would destroy, was, according to the best information available to the Committee on Un-American Activities—had been or was a member of the Communist Party and it is safe to assume that the reason for refusing to answer the question is that they did not want it to appear he was a member of that organization.

Mr. MCCORMACK. Have I answered your question?

Mr. GRAHAM. Out of the years of experience you have had it will be of great help.

Mr. MCCORMACK. The character of some of the bills we have had before us—and we have had several schools of thought—one is to attack the Communist Party by name. The other is to attempt to define what the Communist Party does and advocates and make that illegal.

Mr. GRAHAM. I say this. You have probably overlooked this fact. We decided we would only deal with those bills that would outlaw the Communist Party and we would not go into the second group. What we intend here is to confine our testimony to this type and then later deal with the others.

Mr. HYDE. We have already heard testimony on one of the bills in regard to this—that of Mr. Walter who felt the method was better than to try to do so by name.

Mr. WALTER. I guess it is a very simple thing to change the name.

Mr. GRAHAM. I have no objection, but I was endeavoring to make that clear.

Mr. HYDE. Have you read Mr. Walter's bill—7980?

Mr. MCCORMACK. I was appearing today more in support of legislation to outlaw the party rather than in speaking of any particular bill by reason of having been chairman of the special committee 20 years ago, giving the committee whatever value my testimony might offer.

Mr. HYDE. I am endeavoring to get at what is the best way to outlaw the Communist Party, whether by name or by trying to define what it is and then make that illegal.

Maybe you have not given consideration to that?

Mr. MCCORMACK. I have not given that aspect sufficient thought. I want to be frank with you. I am concerned with the objective.

Mr. GRAHAM. May I say then, Mr. Hyde, when I invited Mr. McCormack I did so because here was a man who had vast experience to deal with the subject. His views were reflected in the debates and acts of Congress and I wanted to get that background and experience into the record for the benefit of the committee.

Mr. MCCORMACK. Thank you very much, Mr. Chairman. We must realize we are not dealing with the ordinary human being who makes an error or who is even antisocially minded within our own society. He might be born that way. They are antisocial, against society, but they are Americans just the same. I think the worst of these fellows asked to get out of jail to fight for their country. They violated the law. They may have been antisocial but that does not mean that everybody who violates the law is antisocially minded. They are there because they want something from someone else.

I got letters through the war from persons in jail, from State prisons, begging to get out and to be put into the most dangerous places where the fighting was going on. We are not dealing with them.

We can weigh probabilities in connection with that individual but here we are dealing with a hard, sinister, world-killer mind. They kill individuals to obtain an objective. They liquidate to take over a people throughout, to kill and destroy civilizations and peoples who do not submit. You are dealing with that kind of a mind.

The only justification I see for not passing legislation is that argument that if you drive them underground you make them stronger than if you kept them exposed. I can see there is something to that. As I weigh the evidence I think that time has gone by. Considerations along that line have gone by. Whatever influence that may have had upon me in the past, and I might say that did not have any influence upon me, but I respect those who feel that way and who have expressed themselves that way. But I am not particularly impressed by it because I do not think communism will advance more

in the United States if we meet it headlong and make it a crime than if we made it some color of right to let it continue upon the theory we can follow it better if it is somewhat exposed than if it is completely outlawed.

Those are my views. If someone differs I congratulate them.

Mr. FEIGHAN. I congratulate the gentleman.

Mr. GRAHAM. Our next witness will be Congressman Bennett.

Mr. BENNETT. Thank you, Mr. Chairman.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. It is a real pleasure for me to follow Mr. McCormack. He is a great American and knows whereof he speaks when he comments on this legislation.

I am here to comment on a bill which I have introduced, section 5 of H. R. 3398. This section 5 reads as follows:

SEC. 5. The last 2 paragraphs of section 2385 of title 18 of the United States Code are hereby amended to read as follows:

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof; or

"Whoever collaborates with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any government in the United States, whether or not by force or violence—

"Shall be fined not more than $10,000 or imprisoned not more than 10 years, or both, and shall be ineligible for employment by the United States or any department or agency thereof for the 5 years next following his conviction."

I appreciate the privilege of appearing before this committee in support of H. R. 3398 which is a comprehensive antisubversive, anti-Communist bill. You have asked me to testify on behalf of only one section, section 5, which I have quoted.

The provision which I have suggested adding to existing legislation is:

Whoever collaborates with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any Government in the United States, whether or not by force or violence—

I feel the language I have suggested would make a crime of anything that a bill would make a crime by abolishing the Communist Party by name.

I was active in securing the passage of legislation in this field in 1941 in the Florida legislature, 13 years ago, which specifically named the Communist Party. I understand there have been no bad results from driving the Reds underground as a result of that legislation and similar legislation enacted in other States.

On the basis of the best information that has come before me and on the basis of Mr. McCormack's experience I suggest that it would be a healthy thing to abolish and prohibit the Communist Party specifically.

I am not impressed any longer, if I ever was, and I cannot help saying I was never impressed, with the argument that outlawing the Communist Party would drive the Reds underground. Such an argument would be outweighed by the value in making it clear to every-

body that it is a crime to belong to the Communist Party in this country.

Mr. HYDE. Just one thing.

You said you felt that under the Smith Act and under the language that you suggest here in section 5 that membership in the Communist Party would be a crime?

Mr. BENNETT. I think it would be but I feel that there would be some value in also specifically naming the Communist Party so that there could remain no uncertainty in the matter.

Mr. GRAHAM. At this stage of the proceedings we now have 16 bills before us. After we have heard all the testimony we will sit down in executive session.

Before calling Mr. Norman Thomas, is there any other witness to be heard?

We will then hear Mr. Norman Thomas.

STATEMENT OF NORMAN THOMAS, REPRESENTING THE AMERICAN CIVIL LIBERTIES UNION, NEW YORK CITY

Mr. THOMAS. Mr. Chairman and gentleman, my name is Norman Thomas. I live in New York City and I am here assuming to represent the American Civil Liberties Union. It also happens, unfortunately, unlike the other members of the board, that I am a Socialist and have run for the Presidency of the United States on two occasions which I did not expect to get and did not get.

The other members of the board are not Socialists. They have not reached that stage yet.

On the general basis of all these laws we are agreed. I am ready to oppose any and all of the bills now before you or any combination of them that you may devise for going beyond the Smith and McCarran Acts to outlaw the Communist Party and/or to make simple adherence to the Communist movement a crime.

I need not waste your time or insult your intelligence by dwelling upon the long-standing position of the American Civil Liberties Union and myself to the Communist ideology and the Communist movement. I shall file with you the latest statements of the board of the American Civil Liberties Union, adopted February 15 and March 15 of this year, which carefully state its position.

As for myself, I merely remind you that I was fighting communism long before 1946, in which year Senator McCarthy was accepting support of Communists to defeat Senator La Follette in Wisconsin primaries. I was warning my countrymen of Stalin's true position when, if the Milwaukee Journal reported him correctly, the new Senator-elect was expressing his intention to support the Byrnes-Vandenberg bipartisan policy and commending Stalin for his remarks on disarmament.

Those are important points especially when I discuss the situation in which it was all wrong to be friendly to Communists unless you were getting their votes in 1946.

Now, I want to turn to the bills.

The bills before you are of different orders of badness and probable unconstitutionality. I am not a lawyer and I attach to this statement a brief comment on certain legal and constitutional objections to the Boggs, Bennett, Wilson, Walter, Dies, Hagen, Clardy, and Stag-

gers bills prepared by Herbert Monte Levy, staff counsel for the American Civil Liberties Union. It seems to me that some provisions of some of these bills violate the constitutional provision against bills of attainder; others violate the first amendment. Moreover, I do not believe that Congress has constitutional power—or moral right—to deprive Communists or Fascists, as such, of citizenship. As recently as 1951, a Federal district court, relying on preceding Supreme Court decisions declared:

It is the view of this court that, while the Constitution plenary power over citizenship by naturalization, it leaves Congress no power whatever to interfere with American citizenship by birth.

I was very much interested in the President's address on the State of the Nation to Congress. It is a great pleasure to see a Republican President adopt so many of the ideas I advanced in 1928.

But one thing I chiefly objected to was the suggestion in the message on the State of the Union to decitizenize the Communists—to divest them of the responsibility for their sins. It is a meaningless bit of action.

Mr. WALTER. When you read that proposal did not the question come to your mind, To what country would people in the United States be deported?

Mr. THOMAS. Yes. It occurred to me. I think they would probably be deported to the middle of the Atlantic. I don't think it got anywhere at all. It is just one of the temptations that come to us to satisfy by words the necessity of doing something. They are words, words, words. It doesn't amount to anything.

Mr. FEIGHAN. Don't you think there is a very definite line of demarcation between a naturalized citizen and a natural-born citizen when it comes to the question of depriving either one of them of their citizenship?

Mr. THOMAS. Constitutionally, I think it is a line very well fixed by the Congress.

Mr. FEIGHAN. I believe myself that you could, as an extra penalty, take away citizenship of a naturalized person, and deprive a native-born citizen of rights of citizenship, still requiring obligations of citizenship from either.

Mr. THOMAS. I presume you could. I think it would be very stupid to do it. This notion that there is a particular guilt of naturalized persons morally does not appeal to me. I think morally a citizen is a citizen, and a citizen who chooses the United States is just as responsible as a citizen who cannot help being one.

Mr. FEIGHAN. You say a person who chooses the United States. I think by committing treason, sabotage, and espionage he is making the choice for a foreign power.

Mr. THOMAS. I think that, too. If you could make him a citizen of Russia that would be another thing. It is a stupid bit of rhetoric to satisfy our minds and is without practical value because I think it clearly violates the terms of the Constitution.

I would also like when discussing these secondary questions of wording to say something as to what Congressman Bennett testified about.

Whoever collaborates with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any government in the United States, whether or not by force or violence. * * *

I want to take special objection to the word "weakening." It is too vague a word. What weakens? Suppose, to take an illustration that may not have too much merit—suppose I, for instance, talk to a French consul, or the French Ambassador. Suppose shortly thereafter I say I think the French are well justified in opposition to EDC. Would I be weakening the Government? Mr. Dulles may think so. Weakening is a bad word. The Democrats could apply it to the Republicans and both apply it to the Socialists. I think that word should be taken out.

You say you can trust the courts. I do have a good deal of trust in courts, but I do not believe it is right of Congress under strain of emotion to be misconstrued merely because we trust our judges. So I would like to make a special objection to the word "weakening" in the context introduced by Mr. Bennett.

Now, I want to go to the main proposition. The McCarran Internal Security Act, of which the American Civil Liberties Union was very critical, at least was careful to provide that membership in the Communist Party was not per se criminal; and that registration as a Communist would not be used as evidence in a trial; or adherence to the Communist Party; because otherwise the requirement of registration would have been a requirement to incriminate oneself—a requirement clearly contrary to the fifth amendment. You now consider making Communist allegiance criminal per se. Do you intend by new legislation thus to invalidate the old?

Mr. WALTER. You have just used the word "adherence." It is a rather broad word; isn't it?

Mr. THOMAS. I thought your language was equally broad. I do not mean in any particular because your bill is a little more carefully drawn. As you know perfectly well, the more dangerous Communists are those who cannot be proved to be members of the party. I doubt that after 1935, Alger Hiss carried a Communist card. The testimony of Nathan Wilde was published in extenso. He didn't carry a card. Whittaker Chambers did not carry a card.

If I was engaged in writing a law, I would have to consult with lawyers to make it more definite. My own concern is not with legal and constitutional words, vitally important as some of them were, but with the injury you will do democracy and sound public policy in our struggle against communism by outlawing the Communist Party.

I am talking about a method of fighting communism which, after all, is an ideology. It is something of a secular religion with a consequent appeal. It is amoral. I am talking about fighting it on various fronts and not just by police.

Mr. FEIGHAN. The fact that you said it was amoral that means absolutely without any religion or moral principles.

Mr. THOMAS. Well, I do not want to get into semantic discussion. I have read a good deal on religion.

Mr. GRAHAM. I notice a young man taking pictures. I rule that no pictures be taken during the hearing.

Mr. THOMAS. There have been religions that have been amoral and immoral and there may have been devotees in the best as well as in the amoral religions. I think either has greater power when it seems to people to have the force of religion. It is in that sense that I say that communism is a secular religion with a view to an ultimate process of salvation of mankind and, therefore, I oppose it.

I do not think you oppose that kind of religion even if it is wrong simply on the police field. You have to consider whether your police machine makes it easier or harder to carry on that fundamental debate which concerns the minds and souls of men.

I believe the Communist movement is, indeed, conspiratorial as has been established in various court and administrative proceedings in this country. But the Communist Party, that part of the Communist movement which holds conventions, adopts platforms, nominates or endorses candidates, is engaged in a legitimate and essential feature of our democratic way of life. Necessarily, it is doing certain things openly; its statements and its candidates can be judged by the electorate as they judge those of other parties. It is basic to our democracy that it provide an orderly way for men to make changes, even changes by their nature revolutionary.

Only so are we Americans able to say to voters: "We offer in the ballot not only an alternative to the bullet for achieving change, but one vastly less self-defeating in obtaining desirable results." That means that we must scrupulously protect the right of men to form radical parties and in them advocate their cause and seek support. To outlaw the Communist or any other party engaged in legitimate political activities, however objectionable its program may seem to a majority, is to deny a basic democratic principle and invite subversive and ultimately violent action in place of the political action which the Government has outlawed.

I thought this principle was so well accepted by Congress and the American people that last summer, when I wrote my book, The Test of Freedom, I did not spend much space in arguing against the outlawry of the Communist Party. I spent rather more space arguing against its indirect outlawry as a consequence of the enforcement of the Smith and McCarran Acts.

This rash of bills, looking to outlawry of the Communist Party is, I think, a proof of the semihysteria that has been whipped up. It is particularly dangerous because those who talked most of outlawing the Communist Party, least understand the real nature of communism or the real grounds for objecting to it. Powerful interests in America wish to damn everything from TVA to democratic socialism by the false argument that the welfare state necessarily equals or soon will equal socialism, and that socialism already equals communism. This lie has been preached at great expense to American taxpayers by corporations which deduct the cost of propaganda advertising before computing income-tax returns.

Only the other day I was asked by the assistant prosecutor of Monmouth County, N. J., in his private capacity as attorney for one of the civilian scientific workers suspended in the badly conducted Fort Monmouth inquiry, if I would testify in a future formal hearing concerning one of the charges against his client. That charge was that he had been a member of the Young People's Socialist League between 1936 and 1939. I replied that I should gladly testify and that the charge was outrageous, since neither the Socialist Party nor any of its subsidiary organizations had even been called for examination by a congressional investigation much less been listed by the Attorney General.

In view of such circumstances as these, I should expect our reactionaries and neo-Fascists to do their utmost to stretch a bill outlawing

the Communist Party into the outlawry of any party which might believe that water power belongs to the Nation and should not be turned over to private utility companies.

Did you ever see the advertisement of two sleeping cherubs and underneath, "Will socialism be their heritage?" This is put out by the private utility companies to get the power from the St. Lawrence River.

Mr. FEIGHAN. Mr. Thomas, I have just received a copy of your talk so I have to get this from memory. It seems to me I heard you say that the Communist Party is a conspiracy.

Mr. THOMAS. It is part of a movement that is conspiratorial.

Mr. FEIGHAN. And subsequently you said it was a political party. I think there is a definite hiatus between the two and they are not reconcilable in our form of government set up under the Declaration of Independence, the Constitution and the Bill of Rights. Communism is a conspiracy.

Mr. THOMAS. I am not sure again whether we may be talking about words. For longer than the average Democrat or Republican, the Communist Party was not a party in that sense. It existed—it belonged to the Communist movement, a vast conspiratorial movement; branches or parts of them are initiated and are doing things which per se are legitimate. The Communist Party, as a party in its public activity, has done that which is legitimate and it is precisely this legitimate activity you would ban by outlawing—leaving all the conspiratorial elements untouched.

I am not arguing the immoral question and the nature of the whole Communist movement.

Mr. HYDE. Then you say that even you yourself recognize that the Communist Party is a conspiracy but I have not heard you say it is a conspiracy to do what? I assume, nevertheless, because it has some good aspects we should not outlaw it. Is that right?

Mr. THOMAS. I think I must have done badly.

You do not get my argument. The Communist movement is a conspiracy to achieve universal power. The Communist Party is part of that movement. I want to know how to fight the whole movement. I say the worst way is to take out the power which to the average man seems most legal and most legitimate—which of itself is legal—that that is not the way to do it.

I can imagine a criminal conspiracy in ordinary law which would have some legitimate activities on the outside—business or other activities. You would not fight that conspiracy effectively in my judgment by banning its legal activities.

Mr. HYDE. The legitimate activities of the Communist Party are not a very significant part of its overall program of complete world domination; destruction of Christian civilization; and many other objectives I could supply. It seems to me it is rather farfetched to say there is 2 percent good in this when the 98 percent is devoted to the total destruction of our Government and all free nations in the world.

Mr. THOMAS. Without arguing your statistics which I think are open to some question, it depends on circumstances. Who is doing what and how much of it? I think the argument can be turned against you because all you are going to do when you outlaw the Communist Party is to prevent the legal activities. The things that

are illegal you will not touch any more than you touch by existing legislation the work of the FBI and the general subversive activity.

Mr. WALTER. You said we must not outlaw a party that has proper objectives and you said just after that the objectives of the Communist Party were part of a conspiracy.

Mr. THOMAS. Let me explain what I mean.

There is a dualism. Life is not so logical as we sometimes make out to the voter. On the face of it the objectives are legitimate. They are the change by the use of legal means—this or that law—of the social arrangement. When we see governments are going to do something against us, you deny the opportunity of arguing the legitimacy or illegitimacy of the specific proposal.

Mr. HYDE. Is a man who is a murderer not a murderer because he is giving good things to his mother?

Mr. Thomas. Yes. But I would not pass a law that would make it illegal for one called a murderer to be good to his mother. Goodness to a mother is not what I would outlaw.

Mr. HYDE. You would certainly outlaw the murderer?

Mr. THOMAS. No. I would not outlaw him. I would in-law more successfully than we do. I would like to see them arrested and punished specifically for the crime of murder and I think you are on extremely difficult ground when you talk so simply of outlawing a murderer even when that social complex prenomenally includes a social movement. It does not help us to fight communism to get up and talk about a murderer and use these ultra simple illustrations.

May I go on for a moment with the argument. I love to answer questions.

Mr. GRAHAM. Our time is going.

Mr. THOMAS. To go back to the Communist Party. The evidence in various court procedures and the statements of former Communists makes it plain that the men and women actively engaged in subversive activities or espionage are always withdrawn from activity in the Communist Party; they and their work are unknown to rank-and-file members. The outlawry of the party might possibly make it a little more difficult to find and recruit underground workers, although that is not certain. What is certain is that the outlawry of the party would make it far harder, not only for the public but even for the FBI, to keep tabs on Communist thought and activity; it would make it easier for Communists to practice deceit. As long as there is an open and legal Communist Party there must be avowed Communists to run it. The existence of the party to some extent provides, almost automatically, the disclosure which the McCarran Act clumsily seeks. In the familiar illustration, it is the part of the iceberg above water which shows where the danger really lurks.

There could be no greater danger to shipping than to blow off the top of the iceberg—if that were possible. It is equally dangerous to outlaw the legitimate Communist Party. Already the Attorney General in an interview in U. S. News & World Report (September 4, 1953) and J. Edgar Hoover have testified that even the Smith Act has tended to send the Communists underground. "Hence," said the Attorney General, "they are better organized and detection is more difficult."

As long as there is a legal Communist Party which publishes platforms we shall have some clue to the Communist line and by com-

parison of Communist platforms with the platforms of other parties we may get some rather valuable hints as to possible interpenetration of other parties. It is madness to believe that a worldwide movement with the ideological strength of communism and the influence that it has achieved in America will be driven out by legal fiat.

Scholars now tell us that paganism lived on for centuries in Western Europe despite the cruelest punishment of its adherents. It lived in the debased and degraded form of worship of an antichrist. It was largely responsible for cults of witchcraft against which superstitious centuries invoked such terrible punishments, mostly in vain. Historical analogy is not perfect but it is suggestive.

I can testify from my own personal contacts that within recent months there is not more but less understanding of the real evils of communism in the United States; not less but more sympathy with it. That is one of the direct and more unfortunate results of McCarthyism. The outlawry of the party will strengthen this movement of sympathy among thousands of persons who doubtless will not voice it openly, but whose secret sympathy would, nonetheless, be hurtful to the growth of the sound understanding of communism and its threat to freedom.

Let me sum up this argument by saying that in practice the outlawry of the party would give communism the appeal of both mystery and martyrdom to thousands of Americans, especially American youth. It would further encourage determined and intelligent Communists to interpenetrate other parties—even the Republican—or under some circumstances to form a new party with an innocuous name and, outwardly, a legitimate program.

To these major arguments against any or all of the bills now before you, let me add one minor but important consideration. The outlawry of the Communist Party would discredit American democracy abroad and add to the suspicion of us which already hampers our foreign policy. Communism in many European countries is too strong to be outlawed by existing governments. The attempt might invite serious riots, if not rebellion; it would certainly recoil on the Government. Other nations, like Great Britain, would regard outlawry of a Communist Party as preposterous. For us Americans to do what other democracies won't or can't do would bring upon us contempt for hysteria rather than respect for strength.

This is not an argument lightly to be dismissed. The fate of democracy in the whole world hangs primarily upon American leadership. Such leadership at best is difficult. Inevitably we, our plans, and our democracy itself are subjected to unreasonable and unfair criticism. Nevertheless, our success depends upon our holding the confidence of our allies and our friends. Needlessly to impair that confidence is to hurt America, and I can testify from firsthand knowledge of the degrees to which, legitimately and illegitimately, so-called McCarthyism has hurt our moral and intellectual standing in the world and the confidence of its peoples in it.

For Congress to outlaw the Communist Party would increase that hurt.

I apologize, lady and gentlemen—I am not arguing that as Constitution. The Constitution is get-around-able as I have discovered.

I am arguing it is undermining sound public policy. The right way to fight complex movements is more than something that can be dealt with by police methods which would only affect its obvious and lawful activities.

Mr. GRAHAM. Thank you.

Mr. THOMAS. Mr. Chairman, may I ask permission to file with you the more detailed legal comments of the American Civil Liberties Union?

Mr. GRAHAM. They will be accepted and made part of the record.

Mr. WALTER. May I call your attention to the statement of the American Civil Liberties Union? In the last paragraph there seems to be a misrepresentation. It reads:

> But we hold it to be an ominous violation of our own heritage and principles to condemn or punish, politically, socially, or economically, any person, Communist or other, without due process of law and procedure.

Mr. THOMAS. I did not write that particular sentence.

Mr. WALTER. I am sure you did not write it.

Mr. THOMAS. The good part I wrote. You know, as always, it is the good part of the bill that you write.

Mr. WALTER. I am sure you did not even see it.

Mr. THOMAS. Yes. I did. There is legitimate ground for saying you can seem to comply with legal procedures and yet not give due process of law. The courts are full of cases that would substantiate that statement and I am sure that is what I and my colleagues had in mind.

Mr. HYDE. Do you have any objection to defining or attempting to define that which is illegal or that part which is bad or rotten and make that a crime?

Mr. THOMAS. I think you have done that already. I do not think you need more legislation. I think you need the enforcement of what you already have. You have laws against sabotage, against espionage—the Smith Act and McCarran Act that met with my criticism.

Mr. GRAHAM. In the last 2 or 3 days the Attorney General says he needs additional laws to deal with sabotage and espionage.

Mr. THOMAS. All right. Let him introduce laws having to do with espionage. I wish, gentlemen, you would recommend those methods.

What would help so enormously would be the constitution of a joint congressional committee of 15; 2 from each party and each House and 7 to be appointed by the President—distinguished citizens—to survey the whole field and to have the power of subpena to make recommendations on additional legislation; to establish proper loyalty procedures in congressional investigations.

The country is losing confidence in a republic run by McCarthyism. What is happening is loss of confidence all over the country and we need to restore it in the fight against communism. I am worried whether we are fighting communism by a method which directs so much attention to McCarthyism.

I have been very poor in getting elected; but very good in knowing what was happening. I always knew I would not be President.

Mr. GRAHAM. Thank you, Mr. Thomas. The committee will stand adjourned.

(The statement referred to by Mr. Thomas is as follows:)

ANALYSIS OF BILLS DESIGNED TO OUTLAW THE COMMUNIST PARTY NOW BEFORE THE HOUSE JUDICIARY COMMITTEE, PREPARED BY AMERICAN CIVIL LIBERTIES UNION

H. R. 266 (Boggs), H. R. 3398 (Bennett)

These two bills are identical except that section 8 of the Bennett bill does not appear in the Boggs bill.

Section 2, which directs the Attorney General to bring criminal proceedings against present or former members of the Communist Party, "when he has reason to believe that such persons have committed any offense punishable by any law of the United States," is puzzling. The ACLU assumes that the Attorney General, in fulfillment of his oath of office, would prosecute when he believes the law has been violated. Enactment of a law specifically instructing the Attorney General to so act is wholly unnecessary.

Section 3 would amend the present Federal Rules of Criminal Procedure, which provide that a person who is arrested for an offense not punishable by death should be admitted to bail before conviction. This rule is in accordance with the requirement of the eighth amendment to the Constitution, which guarantees the right to bail. But section 3 of these bills would provide that generally—subject to the discretion of the court—a person arrested for a noncapital offense should me denied bail if he is arrested for the following reasons: (1) Misprision of treason, (2) rebellion or insurrection, (3) seditious conspiracy, (4) violation of the Smith Act of 1940, (5) failure to register under 18 United States Code 2386 if an organization is subject to foreign control or if one of its aims is to control or overthrow by force the Government, (6) telling soldiers to refuse to do their duty, (7) making false reports when we are at war in an attempt to promote the success of our enemies, (8) recruiting for service against the United States or enlisting to serve against the United States. It would also apply to certain offenses punishable under the McCarran Internal Security Act of 1950—the provisions making it unlawful to do anything which would substantially contribute to the establishment of a foreign totalitarian dictatorship here, violating security regulations, attempting to escape arrest or escaping under the detention provisions of that act, or failing to register or file reports under that act. Apparently subsection 2 of section 3 would deny bail altogether when such were appealed in the courts, even if there is a substantial question which should be determined by the appellate court. This would violate the constitutional right of bail, and its adoption would only compound the problem because almost all the provisions of the McCarran Act, cited above, are of doubtful constitutionality. Thus, a person could be kept in jail for years while his case was heard by the courts, even though the law under which he was imprisoned is later found to be contrary to the Constitution. We are vigorously opposed to the Communist totalitarian movement, but unless we are to adopt Communist methods ourselves, we must stand firmly behind our democratic procedures which grant equal treatment under law to all.

Section 5 would amend the Smith Act of 1940, which prohibits the advocacy of violent overthrow of the Government, by adding a new criminal offense. This crime would be collaboration "with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any Government of the United States, whether or not by force or violence." This is an entirely new concept, and our emphasis here should be on the word "weakening." For example, if a person agrees with a supporter of Great Britain that the New Look in military affairs is wrong, and joins him in making a public statement on the subject, it might well be claimed that he is collaborating with an adherent of a foreign nation and working for the weakening of our Government, and thus he is guilty of a criminal offense. The vagueness of the proposed law could be used to seriously impair the expression of opinion, which is our democracy's reservoir of strength. The Supreme Court has held that when a law, because of its vagueness, may punish language fairly within the protection of free speech, the law violates the first amendment as well as due process of law (*Winters* v. *N. Y.*, 333 U. S. 507 (1948)).

Section 6 would make certain kinds of espionage punishable by death. This section is being further studied by the ACLU, but we can comment to this extent: The provision permitting a penalty of either death or imprisonment for no more than 30 years would inevitably result in a sentence of death if the judge thinks that 30 years' imprisonment is not sufficient punishment. That was the situation in the Rosenberg case. The ACLU found no civil-liberties violation in the Rosenberg death sentence, for there the penalty was not so excessive as to con-

stitute a violation of due process of law; hut the proposed provision in section 6, which would rule out the aiternative of life imprisonment, might well result in cases in tbe future wbere the death penaity would violate due process of iaw.

Section 7 wouid amend section 106 of the Uniform Code of Military Justice (50 U. S. C. 700) by providing that any person found acting as a spy in any place under the Armed Forces jurisdiction, or in any private establishment doing defense work, must be tried by a court-martial or military commission, not only in time of war—as the law now provides—hut in peacetime. One of the hulwarks of the Angio-Saxon iaw is that an individual has a right, a constitutional right, to be tried hy the civilian courts in peacetime, unless he is a memher of the military. While the Supreme Court has upheld the right of a military tribunai to sentence to death saboteurs who were ianded on our shores by submarine, it apparently did not then deal with the broader constitutional issue (*Ex parte Quirin*, 317 U. S. 1). However, the Supreme Court did long ago hoid that military trihunals could not conduct trials of civilians, even in wartime, in areas not actuaiiy invoived in warfare (*Ex parte Milligan*, 4 Waii. 2 (U. S. 1866)). As decisions of the military courts are generaiiy not reviewabie by the United States Supreme Court, even where constitutional issues are concerned, if they were fuiiy considered hy miiitary authorities (*Burns* v. *Wilson*, 346 U. S. 137), a person is in effect denied his right to raise constitutionai due-process questions in the civilian courts. He may be deprived of a fair trial hy the miiitary without Supreme Court consideration. There is no reason why the regular machinery of justice cannot handie such wrongdoing, nefarious as espionage is.

Section 7 also makes mandatory the punishment of death in these cases. This is a violation of due process of iaw as it does not reiate the offense to the punishment—there is no attempt to make the punishment fit the crime. Espionage or other subversive activities must he vigorousiy deait with, but under the particuiar circumstances of a particular case tbe offense may be relatively minor. Yet, under the proposed amendment, the person committing the crime must be put to death.

Section 8 of the Bennett biii wouid take away from naturaiized citizens their citizenship and make them deportable for violating parts of section 5 of the McCarran Internal Security Act of 1950, which makes it a crime to conceal membersbip in Communist organizations. The Internai Security Act requires disclosure of snch membership by Federal employees or appiicants for such employment, and hars such members from Federal empioyment. Section 8 is a compieteiy unjustified discrimination between native-born and naturaiized citizens. In our democracy there shouid he no such thing as second-class citizenship. Equal treatment shouid be given to aii American citizens. Moreover, naturaiized citizens should not be deprived of their citizenship on grounds which did not exist at the time of their naturalization. This is a vioiation of the spirit of the prohibition of ex post facto iaws.

H. R. 7337 (Wilson)

This biii would outiaw the Communist Party hy providing that any member of the Communist Party or "any other organization having for one of its purposes or aims the control, conduct, seizure, or overtbrow of tbe Government of the United States hy the use of force or violence" with knowledge tbereof, is guilty of a felony. It provides that such a person shaii iose his nationaiity and aii rights of citizenship.

Citizenship is granted to native-born citizens hy the Constitution and these citizens cannot be deprived of citizenship by a mere statute. As recentiy as 1951, a Federai district court, relying on past Supreme Court decisions, said: "It is the view of this court that while the Constitution gives the Congress pienary power over citizenship hy naturaiization, it leaves the Congress no power whatsoever to interfere with American citizenship hy hirth." This opinion was also expressed hy several Congressmen and Senators in commenting on President Eisenhower's proposal concerning revocation of citizenship.

This biii attempts to foreciose tbe possihiiity of the Communist Party reorganizing under a disguised name hy making criminai knowing membership in any other organization which has the purposes outlined in tbe biii. It also attempts to make criminai conviction easier by requiring that an organization which has been judiciaiiy found to have such purposes or aims is henceforth conciusiveiy presumed to have such purpose or aim. Now, this conclusive

presumption is bad on two gronnds. First, it denies the right of a fair hearing to an accused indlvidual. Any person prosecuted in criminal proceedings should have the right to try to prove himself that the organization was not as described. He should not he restricted by a decision in a proceeding in which he was not a party and in which be had no chance to make his owa defense. The right of personal defense is the essence of fair trial. Second, the conclusive presumption is unreasonable because it assumes that once the organization is found, in a judicial proceeding, to he of a particular kiad at a particular time, the organization may never change. The due process violation in the biil is that such a finding may be applied to persons who are members of the organization at a different time, when the entire situation may be different.

Section 3 of the hill is bad. It provides that the biii apply to offenses committed partly after the date of the enactmeat of the law. Insofar as the bill attempts to make pnnishahle the offenses committed partly before its enactment, it is ohviously an unconstitutional ex post faeto law.

H. R. 7980 (Walter)

This hill which would make criminal the advocacy or membership in an organization which advocates the establishment within the United States of a dictatorial one-party totalitarian government, might outiaw Fascist organizations as well as the Communist Party. There is no requirement of intent to establish a totaiitarian dictatorship or that a clear and present danger be found hefore such advocacy hecomes criminal. The ACLU realizes that both requirements may be read into the law by the courts, as the Supreme Court did with the Smith Aet ia the Dennis case, hut certainly if the legislature intends these requirements, it should say so. The ACLU opposes this bill on the grounds that it deals only with advocacy, the exercise of free speech, and makes just speech criminal. It does not deai in any way with real acts to establish a dictatorial one-party totalitarian government, acts which should properly be opposed. The target is only speech. And the ACLU believes that speech, even the most radical speech, should be protected under the first amendment.

H. R. 7894 (Dies); H. R. 8326 (Hagen)

These identical bills would outiaw not only the Communist Party, but also Communist frontal groups, which are never defined. To outiaw a frontal organization without any attempt to define what such aa organization is, will lead to wide speculation and confusion among potential defendants, juries, and courts. It violates the constitutional coacept that a criminal law must be sufficiently defined so that a person may know when he is violating it. An additional objection is that these Communist-front groups—with which the ACLU never cooperates—nonetheless are organizations that engage in sponsoring legitimate, albeit controversial, causes which are protected by the first amendment. Although suspect, their advocacy—speech—is permissible under the Constitution.

But the hill goes even further. It removes from all such groups all "rights, privileges, and immunities" which they may or have had. Since "rights, privileges, and immunities" are granted hy the Constitution, the ACLU questions if a statute can take them away. A fair trial is regarded as a "right, privilege, aad immuaity." Does this mean that henceforth such organizatioas and their members are not entitled to fair trial? As we stated above we are opposed to communism, but unless we are to make ourselves over into the image of communism, we must observe our democratic principle of equal treatment under the law for all.

H. R. 6877 (Clardy)

This biil is suhstaatially the same as Mr. Wilson's biil (H. R. 7377), except that the conclusive presumption of that biil is just a rehuttable presumption here. While this is some improvement, our other objections still stand.

H. R. 6943 (Staggers)

This bill would create a commission to study the question of outiawry of the Communist Party. While for the reasons presented in Mr. Thomas' testimony, the ACLU is opposed to outlawing the Communist Party, what particularly concerns us in this hill, however, is that the commission is given suhpena power, but there is no requirement at all that it utilize fair investigating procedures. We believe a code of fair procedures should be written into the bill and should not merely he left to the commission.

The commission is also authorized in section 10 (b) to secure all the information it wants from any Government agency. There is real danger here. What about the files of the FBI and other intelligence agencies? It would be a grave violation of due process if the commission were to make such file information public in individual cases, since such information is unevaluated and the individual has had no chance to rebut it at a hearing. This bill should therefore be amended to provide for keeping any investigative files secret and confidential.

APRIL 2, 1954.

STATEMENT OF HON. PAUL A. FINO, A UNITED STATES REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. Chairman, I wish to commend the House Judiciary Subcommittee for undertaking this most important job of considering legislation to outlaw the Communist Party in this country. As a Member of this Congress I support this committee in its efforts to eradicate the great menace of communism.

I have always felt and still maintain that communism should and must be outlawed in the United States once and for all. Communism must be outlawed so that we not only remove this threat to our democracy, but stop the followers of this foreign ideology from invoking the protection of our democratic laws to carry on, with impunity, their un-American and subversive activities.

Over the many years we have seen, to our dismay, our guaranteed constitutional freedoms abused by men who avail themselves of its protection and rights, not to further the cause of human freedom, but rather to propagate their exotic ideology of communism. We have, much too long, permitted the violent abuse of these sacred rights by Communists, fellow travelers, and irresponsible disciples of communism. We should and must no longer tolerate this criminal offense against this great democracy.

Under the inhuman principles of communism we have seen a deliberate attempt to destroy our democratic way of life—we have seen a callous attempt to undermine and destroy our freedom. Those abuses of our sacred rights should not and must not be tolerated any longer.

To outlaw the Communist Party would be taking a step in the right direction toward safeguarding this great democracy from the venom of communism.

The welfare of this Nation is in jeopardy and the longer we pussyfoot with this threat, the greater their opportunities to destroy and cripple our democratic principles on which this Nation grew and prospered.

The Communist Party should and must be outlawed formally, legally, and as thoroughly as possible.

This committee and the Congress of the United States would be rendering the greatest service to the American people by enacting a law that will deny the protection of our Constitution to those elements who are pledged to destroy our American way of life.

(Whereupon the subcommittee was adjourned at 12 o'clock noon.)

INTERNAL SECURITY LEGISLATION

WEDNESDAY, APRIL 7, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:30 a. m., in room 346, House Office Building, Hon. Louis E. Graham (chairman of the subcommittee), presiding.

Present: The Honorable Messrs. Graham, Hyde, Feighan, and the Honorable Ruth Thompson.

Mr. GRAHAM. The committee will come to order, please.

The first witness will be Representative Joseph N. Carrigg, a Member of the House.

STATEMENT OF HON. JOSEPH L. CARRIGG, A UNITED STATES REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA

Mr. CARRIGG. Mr. Chairman and members of the committee, I am Joseph L. Carrigg, a member of the House of Representatives of the 10th Congressional District of Pennsylvania.

I have introduced H. R. 8483, which is a bill to make affiliation with the Communist Party of the United States unlawful. This bill is very similar to other bills which have already been presented to you and upon which you have already taken testimony.

The reason that I am appearing this morning is because of the fact that I feel that after you have had the opportunity of hearing all of the witnesses in connection with the various bills that have been presented to you, that the committee itself, perhaps, out of all of the welter of this testimony, will have a bill that will be very favorably accepted by all of the Members of Congress.

I want the committee to know that as far as my district is concerned, we are deeply concerned with this issue, and when this bill comes out, as I hope it will be reported eventually to the floor, you will have the cooperation of myself, particularly, from the 10th Congressional District and all of those whom I can prevail upon to be agreeable to the bill which will be introduced.

Mr. GRAHAM. Thank you.

Mr. Hyde, any questions you would like to ask?

Mr. HYDE. No.

Mr. GRAHAM. Miss Thompson?

Miss THOMPSON. No.

Mr. GRAHAM. I have one question: I have not had the opportunity to examine your bill carefully. You have confined it strictly to the outlawing of the Communist Party, is that correct?

46150—54——6

Mr. CARRIGG. That is correct. It is a very simple bill.

Mr. GRAHAM. All right.

The next witness is Representative Clardy. Will you identify yourself for the record, please?

STATEMENT OF HON. KIT CLARDY, A UNITED STATES REPRESENTATIVE FROM THE STATE OF MICHIGAN

Mr. CLARDY. My name is Kit Clardy, a Representative from the Sixth Congressional District of Michigan.

As a previous witness has just pointed out, there are a number of bills all aiming at the same objective. I am not particularly blowing my horn for my own bill today because I have no particular pride in authorship, but I do think since the objective is the same in all of them, that it might be well that I say a few words on two or three subjects that may not have been touched upon by previous witnesses.

Mr. GRAHAM. We will be glad to hear you.

Mr. CLARDY. Because of my illness I have not been able to hear any of the other testimony and I hope I am not repeating anything that may have been said. But as a member of the House Committee on Un-American Activities, I think that perhaps I may have a viewpoint a trifle different from some of the others. I have watched some 144 witnesses appearing before us take the fifth amendment. I have observed the actions of people that we knew to be Communists before us. I sat in briefly on the trials of the six Communists recently convicted at Detroit and because of which I had to postpone and am still postponing some hearings out in Michigan that will go forward next month. Out of all the experience I have had on the committee, I have reached a number of definite conclusions that seem to me outweight all of the arguments and all of the things that may be said in opposition to outlawing the party. In addition to that, I have a suggestion to make that might be well incorporated either in this bill or in something to be initiated by the committee as an amendment to the Smith Act or as an entirely separate statute. It seems to me that those who are arguing against all efforts to outlaw the Communist Party are shutting their eyes to the real situation.

In my opinion every Communist is a criminal. It seems to me that everything we do must start with that as the central fact. Every Communist must and does owe his primary allegiance to a foreign government. We have had that demonstrated before my committee times without number. Of course it is pretty well admitted today, except by the extreme left-wingers who still would have you believe as they tried to make us believe with respect to the Communists in China, that they are entirely separate and independent. They are not. They owe no allegiance to America, they owe it only to a foreign power.

A Communist is consecrated to the task of destroying his native country at the command of the Kremlin. He dedicates his life to the carrying out of a worldwide revolutionary conspiracy managed and directed by the Kremlin rulers of Russia. Every move he makes is nothing less than treason. That is why I say in our approach to the problem we must take into account the fact that we are dealing with people who are criminals of the worst sort, not just ordinary

mine-run criminals that we have in our courts, but people who would destroy us, our way of life, everything that we hold dear.

So it seems to me that those who tearfully talk about preserving democratic processes are either willfully or ignorantly ignoring these hard, brutal facts.

Experience tells us, at least it tells me, that if our position should be reversed, and these Communist traitors should now be in power in place of us, the firing squad would be the fate of every one of us now seeking to do what we are trying to do today and to protect this Nation from destruction. So it seems to me that the soft-hearted idealists who would have you believe that the Communist Party is what its name would seemingly imply, that is, just another honest political party instead of the criminal conspiracy that it really is, have either blinded themselves willingly and willfully or out of pure, unadulterated ignorance.

So I say that those who oppose outlawing this gang of cutthroats have just failed to see the thing in its true light.

Now, I know that some argue that outlawing the party will drive it underground. I have been on the committee, the Un-American Activites Committee, long enough to know that they are already burrowed underground as far as they can get. They are not carrying signs any more, they are not identifying themselves. So it would seem to me that again those who oppose the bill on that ground are not looking the facts in the face.

But at any rate, it would seem to me that so long as we hold to the theory that murder is a crime that must be punished, we ought to go further and say that he who would destroy his Nation is more of a criminal than a murderer and to say that it should not be a crime is in effect to say that we are willing to tolerate that which would destroy us.

I have a couple of suggestions to make: It might not properly be said to belong in this bill. That is why I said a while ago you may want to initiate something new. But I have discovered in watching the trials of the Communists under the Smith Act that in every instance, no matter how often it has been established in other courts against other defendants, the Government must painfully and slowly go over the same old path of demonstrating that the Communist Party is dedicated to the task of destroying us by force and violence.

It would seem to me that it would help a great deal if we would establish a rule of law by statute which says that evidence establishing the fact that a defendant is or has been a member of the Communist Party will constitute prima facie evidence that he is guilty under the Smith Act of conspiring to destroy us by force and violence. That is the fact.

You cannot be a Communist unless you are dedicated to that proposition. It would certainly simplify the problem of convicting them if a prima facie case could be made out under the Smith Act by establishing the fact that he has been a Communist.

That is all I have to say. If you have any questions as to what I have suggested, I will be glad to answer them.

Mr. GRAHAM. Have you any questions, Mr. Hyde?

Mr. HYDE. Mr. Clardy, do you think the same purpose could be accomplished by perhaps broadening the provisions of the law, like

the Smith Act, defining the crime that we say the Communists are committing, thereby making it, say, less difficult to convict these people of conspiring to overthrow the Government by force and violence, rather than by simply outlawing the Communist Party as such?

I am just wondering if we will accomplish that purpose. Suppose they organize under the name of the Constitutional Party and do not call themselves Communists?

Mr. CLARDY. You will accomplish a large part of it, I will agree, and if we could do no more than that in this session I think we will have taken a great forward step. But I think there is need for an outlawing of the party to complete the picture and for a very practical reason.

If it is a crime to belong to this conspiracy, this criminal conspiracy, then per se, you may be haled into court and charged with that and that alone. Under the Smith Act, unless you would incorporate in it almost exactly what we are talking about here, that is, outlawing the party and making that part of the criminal offense which in substance amounts to just what those of us putting in these separate bills are arguing for, I do not think you would fill out the picture.

The reason I would like to have it outlawed is that it would make it so much more difficult for the apparatus to work. We know on my committee that the moment that you expose one as a member of the party you have ruined his usefulness. If, in addition to that it should be a crime, there probably will not be quite so many who are willing to join the apparatus. At least, that is what my experience tells me. I may be wholly wrong, but you cannot go wrong in saying that something that is a crime shall be punished, and punished in the most severe ways imaginable. You are probably 75 percent right, though, in the suggestion that you make.

Mr. GRAHAM. Miss Thompson, any questions?

Miss THOMPSON. No. It was a good presentation.

Mr. GRAHAM. Thank you very much for your presentation.

Mr. CLARDY. Thank you.

Mr. GRAHAM. Our third witness is a witness representing the Communist Party. Is that person present? We will be glad to hear him.

Mr. Dies, had you completed your full statement to the committee the other day? There is a slight difficulty in this. Some of the witnesses had been requested to appear at 10 o'clock, and they will be here in about 10 or 11 minutes. If you have not completed your statement, we can hear you and if not, we will recess until 10 o'clock.

Mr. DIES. I have completed my statement. Judge Musmanno is here to be heard. I do not care to testify any further at this time. Thank you.

Mr. GRAHAM. We will take a 10-minute recess until 10 o'clock and then continue the hearing.

(Brief recess.)

Mr. GRAHAM. The committee will come to order.

Would you identify yourself for the record, Mr. Gerson?

STATEMENT OF SIMON W. GERSON, LEGISLATIVE CHAIRMAN, NEW YORK COMMUNIST PARTY, ON BEHALF OF THE COMMUNIST PARTY

Mr. GERSON. Mr. Chairman, Miss Thompson, gentlemen, my name is Simon W. Gerson. I am legislative chairman of the New York Communist Party. I am also a former candidate of the Communist Party, formerly its election campaign manager, and at one time have held appointive public office.

I appear here today on behalf of the national committee of the party in opposition to the 11 bills designed to outlaw the Communist Party and now before your committee.

While these measures may seem to touch only one small section of our population, the implications of these bills are of far-reaching national importance. One of your congressional colleagues, Representative Hurley O. Staggers, warned the committee against blitzing through such bills. He put the question correctly when he told this subcommittee on March 18 that:

> It is the most important thing that comes before us. It will affect our way of life.

The issue, members of the committee, is not simply the legal existence of a single political party. That in itself would merit deep consideration. But the issue here is the infinitely deeper one, as Mr. Staggers indicated, of the continued existence of a constitutional way of life in the United States.

For what we have here is nothing less than a legislative hellbomb that would pulverize our constitutional liberties. The radioactive dust of such measures would not settle for a long time. Significantly, these bills are advanced precisely at a time when America and the world are in a great debate over the issues of the H-bomb and Indochina. People are asking whether the awful power of the H-bomb—from which no hide-or-run-schemes can protect us or anybody else—will be controlled. People are debating the issue of whether the administration will drag our sons into a new war in Indochina. The question, therefore, arises: Are these bills designed to strangle public discussion and opposition to such a war?

It is precisely at this time that the constitutional guaranties of free discussion, as set forth in our Bill of Rights, are so essential to our national life. That is why we emphasize today, at the very threshold of our argument, that we call not only for the defense of the rights of the Communist Party but the defense of the Constitution and Bill of Rights. We ask you constantly to remember the point made by Supreme Court Justice Jackson in another connection, that the rights of all Americans are tied up in one bundle with the rights of the Communists.

We regard these bills as fundamentally unconstitutional. They are bills of attainder in direct violation of article I, section IX of the Constitution. They are, for the most part, vague and indefinite and obviously destructive of the rights of freedom of speech, press, and assembly. No legislative tinkering can make them even plausibly constitutional, since they are squarely directed at ideas and associations of Americans—a realm forbidden to Congress by the Constitution.

But it is not primarily the unconstitutionality of these bills that I wish to emphasize today. It is the broad question of public policy that I want to stress.

These bills, we submit, are far worse than the ill-famed Sedition Law of 1798. They move in a dangerous direction—the direction of fascism. A detailed examination of these bills indicates that the pattern is essentially that of fascism: first the outlawing of the Communists and then, swiftly in turn, every other group which opposes fascism or its American variant, McCarthyism.

These bills, if enacted into law, would represent a sinister and qualitative change in American legal processes. They would open jail doors for literally tens of thousands of Americans. In fact, their enforcement would probably require a concentration camp system as an auxiliary to the present Federal prison system.

Mere membership in organizations whose non-conformist activities are frowned upon by the powers-that-be would lay the basis for heavy prison terms. As any detailed examination of the measures will show, these are dragnet bills going far beyond the Communist Party and affecting millions of Americans of all points of view.

In terms of world esteem, enactment of this type of legislation would be the sign absolute that McCarthyism, which the peoples of the globe equate with fascism, has made seven-league strides in the U. S. A. For, as the world knows, fascism has always begun by outlawing the Communist Party, as in Mussolini Italy and Hitler Germany, and then proceeded to destroy every other movement—the trade unions, the cooperatives, the liberals, the church groups—in opposition to its policies of aggression abroad and fascism at home.

Significantly, in those nations where the contrary is true, where fascism or military dictatorships have not come to power—as in England, France, Italy, Belgium, Sweden, Holland, Mexico, et cetera—there, legal Communist Parties exist, with their rights in the marketplace of ideas. There, too, exist trade unions. There, too, one finds a relatively high degree of public discussion about all problems, domestic and foreign. In those countries where McCarthyism is anathema today, it is not considered treasonable to discuss publicly the possibility of negotiations, East-West trade and coexistence of differing social systems.

Fascism, which always began by demanding only the outlawry of communism, based its action on two big lies—the first, the alleged danger of external aggression, generally from the Soviet Union; the second, on the alleged danger of violent overthrow of the government by the Communists. On such bases all antidemocratic actions were justified. It was on such a basis that the aggressive Berlin-Rome-Tokyo Axis was formed. History has demonstrated with crystal clarity that Hitler's aim was world conquest; his method was anticommunism. The Red Scare was the means he used to crush democratic opposition at home in order to serve a handful of German bankers and the great Ruhr industrialists. The Red Scare was the means he used to organize aggression abroad—against both West and East.

Substantially the same basic assumptions are the basis of our native repressionists' proposals. Let us examine them briefly.

Is there a danger of aggression against our shores? There is not a single responsible authority who thinks so. General Alfred M.

Gruenther, testifying July 18, 1953, before the Senate Appropriations Committee, said flatly:

I do not think a war is ever going to come.

Steel magnate Ernest Weir—I might add, incidentally, hardly a fellow-traveller—writing in Harpers Magazine, December 1953, associating himself with the widespread European conviction that the Soviet Union wants peace, wrote:

* * * Europeans are convinced that Russia is not marking time while she awaits the opportune moment and place to start war. On the contrary, they are convinced that Russia actually is eager for peace and will make concessions to get it.

Every sign points to a certain relaxation of tensions, whatever frustrations those relaxations may induce in some of our Big Business or Big Brass circles. Only last Friday, April 2, 1954, the Moscow correspondent of the New York Times, Harrison Salisbury, wrote that the Soviet Union was seeking sincerely to end the cold war and resolve problems by negotiation. Repeated warnings from Soviet leaders that war under H-bomb conditions would mean the end of civilization correspond to the deepest feelings of many Americans, including some Congressmen. Clearly, any policy premised on the theory of Soviet aggression against us is a policy based on a colossal historical lie.

What of the other big lie—the assumption that the Communist Party represents a clear and present danger of the overthrow of our Republic?

As far as the Communist Party is concerned, we reject the notion that we are a clear and present or an obscure and remote danger to the Nation. We say this is not because we are a small party. Large or small, a political party which bases itself on advocating its views and winning the majority of the people to its side can never be a clear and present danger to democratic processes.

If size were the sole criterion, then the Italian and French Communist Parties would be reckoned as clear and present dangers. But in their respective countries these parties are part of the normal political life of the nation. They publish newspapers, lead trade unions, sit in parliamentary bodies, et cetera. The sole danger according to some correspondents in Italy, for example, is that the Communist Party and its allies will legally win control of the government through constitutional processes.

But if a large Communist Party does not constitute a clear and present danger, it is hard to see how a small party can. Sane people cannot accept for a moment the weird notion that the smaller the party, the greater the danger.

Both basic assumptions, both big lies, must therefore be rejected and the entire structure of exceptional laws built upon them must necessarily collapse.

The bills before you are predicated on the assumption—which we vigorously reject—that the party teaches and advocates the overthrow of our Government by force and violence. This is sheer slander and is in sharp conflict with the real truth. This slander is most assiduously circulated by those elements in our Nation and life who do not oppose antilabor violence against strikers or the persistent, shameful violence of the lynch system against the Negro people.

The Communist Party has just published its new draft program, entitled "The American Way," in a quarter of a million copies. It represents the considered viewpoint of the Communists and their proposals for meeting the critical problems now facing the American people—the issues of peace, democracy, and jobs. The Communist Party does not hold that the issue of today is the question of socialism.

The choice before the people today—
says the program—

is peace, security, democracy versus the grip which the monopolists have on the country and their plans of fascism and war.

What does this draft program say about the advocacy of the Communist Party in respect to a transition to socialism? I quote the pertinent section—and submit the entire draft program as part of my testimony—at this point.

Mr. GRAHAM. May I interrupt a moment, please?

Mr. GERSON. Surely.

Mr. GRAHAM. For the benefit of members who were not here, when Mr. Gerson submitted his statement, he also included this booklet. We accepted the statement but no one had an opportunity to review this small booklet. I told him we would consider it in executive session and inform him whether or not we would admit it into the record.

You may proceed.

Mr. GERSON (reading):

The Communist Party advocates a peaceful path to socialism in the United States. It brands as a lie the charge that it advocates the use of force and violence in the pursuit of any of its immediate or long range goals. It declares that socialism will come into existence in the United States only when the majority of the American people decide to establish it. The Communist Party affirms its deep and abiding faith in the American people and their ultimate decision to establish socialism. The needs of our Nation cannot be served by any sect or conspiracy. For no progress, whether of a minimum or of a more far-reaching nature, can come other than through the will and action of a majority of the American people.

The Communist Party has no blueprint for the path to socialism in the United States. The American people will move along the path to socialism as inevitably as other peoples and nations have done because ultimately there is no other solution to their problems. But they will do so in a form and manner which will be determined by the history, the traditions, and the specific needs of the American people. No social system can be imported from abroad. Nor do we propose to do so.

Communists have taught this for years. Thus, William Z. Foster, national chairman of the Communist Party, wrote in 1949 in his book, "Twilight of World Capitalism," at page 125:

* * * In all good time the American people, on the basis of their existing conditions, will decide how and in what form they will introduce socialism. The way our party foresees the possible development of the future is along the following general lines:

First, we propose the regular election of a democratic coalition government, based on a broad united front combination of workers, small farmers, Negroes, professionals, smallbusiness groups, and other democratic elements who are ready to fight against monopoly, economic breakdown, fascism and war * * *

Second, our party contends that such an anti-Fascist, anti-war, democratic coalition government, once in power, would be compelled to move to the left.

Substantially the same position was developed by Mr. Foster in his authoritative work, "History of the Communist Party in the United States," published in 1952.

Election through democratic processes of a People's Front government and the concept of the American road to socialism are not gimmick theories to avoid prosecution. The theory of the American road to socialism—that is, the orientation upon a peaceful and democratic accession to governmental power of the working class and its allies, and the use of its lawful governmental power to advance towards socialism—has been maturing in Communist teaching and advocacy for at least 19 years.

Branding as false the charge that the Communist Party teaches the overthrow of the United States Government by force and violence, I now want to turn to the loosely hurled charges of "treason," et cetera. Here there is a very short answer. The charge of treason is one with which the Founding Fathers were completely familiar. That was why they defined treason very carefully not by statute but in the basic charter of our government, the Constitution. The writers of the Constitution made it clear that treason was not dissent but a clearly demonstrable crime that required a certain minimum of objective proof.

In the 35-year history of the Communist Party there has not been a single Communist ever convicted or even indicted on that charge. In the more than 100 Smith Act indictments drawn by various Federal United States attorneys there is not a single allegation of anything remotely resembling treason, sabotage, violence, or espionage.

Will any rational man argue that a succession of United States Attorneys General under Republican and Democratic administrations have permitted treason to flourish for the last 35 years? Or that the FBI has been unable to discover it?

Of course not. The simple truth is that the Communist Party has not advocated or practiced treason, sabotage, violence, espionage, or any other crimes.

Quite the contrary. In the hour of our Nation's gravest peril, in World War II, 15,000 American Communists served in the Armed Forces of our Nation. A number of them were decorated for heroic service above and beyond the call of duty. The late Capt. Herman Bottcher, killed in action in Leyte, was a well-known Communist. So, of course, is Robert Thompson, now a Smith Act victim in Atlanta penitentiary, and winner of the Distinguished Service Cross for "extraordinary heroism" in New Guinea.

At this point I would like to examine some of the bills in detail as well as the legislative intent as expressed by their sponsors. I said earlier that the bills were a dragnet menace to the freedom of many Americans to speak and associate and that these bills go far beyond the Communist Party.

Representative Martin Dies, speaking before your committee on March 18 in behalf of his bill, H. R. 7984, made it clear that he regarded Socialists as substantially in the same category as Communists. In answer to a question from a committee member, Mr. Dies said:

> The Socialist Party is the Communist Party. Socialism touches communism. Up until the Third Communist Internationale they were in the same Communist movement.

At another point, Mr. Dies said: "All of them recognize Marxism." From the context it is clear that by "all" Mr. Dies was referring to both Socialists and Communists.

Now, who is a Socialist these days? According to some pundits, the last two decades have been years of "creeping socialism." According to some, the TVA is an example of "creeping socialism." On April 26, 1950, Edwin S. Friendly, president of the American Newspaper Publishers Association, attacked the so-called "welfare state" of the then administration and "communism disguised as democratic socialism." It is a matter of record that public housing is persistently denounced as "socialistic" by the real-estate lobby and their political agents.

Under Mr. Dies' definition of socialism and communism, are advocates of TVA, public housing, and such allegedly "socialistic" projects to suffer 10-year jail sentences? What would happen to trade unionists, New Dealers, liberal Republicans, and independents who advance such "socialistic" proposals? What would happen to supporters of the National Association for the Advancement of Colored People who, along with millions of supporters, Negro and white, advance such a "socialistic" proposal as full economic, political, and social equality for the Negro people, one-tenth of the population of the United States? If all this alleged socialism "touches communism," will all these groups not be guilty under Mr. Dies' curious definitions?

Is not this type of argumentation just another way of advancing Senator McCarthy's incredible thesis that the 4 administrations between 1933 to 1953 were "20 years of treason"?

Lest it be said that Mr. Dies' definitions are somewhat unique, let us examine both the bill, H. R. 7980, and the views of a member of this committee, Representative Francis Walter. Mr. Walter seeks to avoid a crude and unconstitutional bill of attainder. His bill does not mention the word "Communist" and he told the committee quite frankly on March 18 that "it is utterly impossible to outlaw the Communist Party as such." He also stated candidly that his statute would cover persons about whom it would be difficult to find "any evidence of teaching the overthrow of the Government by force and violence."

Mr. Walter states that he wants to outlaw the "activities" of "these people" since he admits that "you cannot outlaw a party any more than you can outlaw a chair."

Now, what are these "activities" that H. R. 7980 would make punishable by a 10-year sentence? Testifying before a House Appropriations subcommittee January 9, 1953, FBI Director J. Edgar Hoover defined—and I quote his language—the "principal Communist activities and objectives in the United States" as the following:

1. Its peace objective geared primarily to raising nationwide appeal for a settlement of the Korean war;
2. The recall of American troops from abroad;
3. A five-power peace pact, including Communist China;
4. The resumption of trade with the Iron Curtain countries.

Referring to the national scene, Mr. Hoover said:

On the domestic front, the Communists have also directed their attention to urging repeal of the Smith Act, the Taft-Hartley law, and the Internal Security Act of 1950.

These are the "principal activities" of the Communists—and, incidentally, of many, many more people beyond the Communist Party—as defined by J. Edgar Hoover. Presumably, these must be the "ac-

tivities" which Mr. Walter's bill would outlaw and make punishable by 10-year sentences.

Examine each of these "principal activities." Aren't there millions of Americans, including Congressmen, who want "a settlement of the Korean war"? Doesn't the entire Nation look with revulsion at what the late Senator Taft called "a bloody, useless war"? Doesn't the Nation shudder at the thought of involvement in another Korea, this time in the jungles of Indochina?

And what is subversive about seeking a five-power peace pact, including the government of Peoples China, the effective government of the mainland of China? Controversial, yes; criminal, no.

And if the resumption of East-West trade to help American workers, farmers and business is a criminal activity, then some administration officials and Congressmen may as well get themselves measured for prison denims now. At least one of your Members, Representative Thurmond Chatham of North Carolina, a member of the House Foreign Affairs Committee, told a big dinner in New York on January 25 last that he favored trade with Russia in nonstrategic items. In fact, he made his speech available for readers nationally by insertion in the Congressional Record.

I noticed, incidentally, that he offered yesterday to trade a Guernsey bull for some Russian sables. He is a sharp trader. More power to him.

Are Americans who want to sell butter and other American products to Russian thereforefore guilty of "activities" which would bring them under Mr. Walter's ban?

As far as the domestic activities of the Communists, as defined by Mr. Hoover, is there anything criminal in seeking the repeal of the Smith Act, whose advocacy section was denounced by at least two Supreme Court judges, a CIO national convention, the NAACP, and many newspapers throughout the country? Is there anything criminal in seeking the repeal of the Taft-Hartley law, the announced objective of all sections of the organized labor movement as well as considerable portions of the Democratic Party? Or is there anything criminal in seeking repeal of the McCarran Act which, like the Taft-Hartley law, was vetoed by then President Truman?

Simply to examine these bills is to see how far America has gone in the direction of surrender to McCarthyism. If these "principle activities" of the Communists become illegal, then no American who has any independent views on foreign or domestic policy is safe. Opposition to involvement in the Indochinese war on the side of French colonialism and efforts to stimulate our economy by East-West trade will both be virtually equated with treason or subversion.

Gentlemen, there is a clear and present danger in our Nation. It is the danger of the McCarthyian destruction of basic American constitutional rights. It is, of course, designed first of all to prevent the election of a Congress in 1954 devoted to the return to the policies of the New Deal. McCarthyism throws out a smokescreen behind which the most powerful elements in American political life, the huge banks and trusts, America's financial oligarchy, advance against the interests of the American people. The effect of these McCarthyite bills and the whole hysterical and artificial clamor about the menace of communism is to divert attention from the real problems that concern the American people: Will our sons be fighting in the Indochinese

jungles tomorrow? Will we have our jobs tomorrow? Will we have our liberties tomorrow?

This McCarthyite danger does not come primarily from one or another headline-hunting Congressman. It represents the extreme right in American politics—and is not limited only to a few millionaire Texas oilmen, either. William A. White was quite correct when he wrote of McCarthy's supporters in the New York Times magazine March 21, 1954:

> Some rich and cogent men support him in full awareness of what they are about—which is an attempt to raise up what they believe to be a puissant symbol of right-wing thought and action in Government.

Nor is this extreme right wing in American politics the creation of a moment. This is the same section of American big business which 18 years ago fought President Roosevelt tooth and nail through the American Liberty League. They bitterly opposed New Deal social legislation and any concessions to organized labor.

Later, many opposed any real effort to halt nazism and many actively supported the America First crowd. This extreme right feels that in World War II we fought the wrong war with the wrong allies against the wrong side.

It is this basically pro-Fascist antilabor extreme right wing big business crowd which inspires the present series of violently antidemocratic bills.

If enacted into law, these bills will mark the furthest step down the road to fascism that the United States has yet taken. The United States will then have the dubious distinction of being the first non-Fascist country in the world to outlaw the Communist Party. The world will see it for what it is—an effort to terrorize the country so that we may not debate freely the issues of the day: the prohibition of the H- and A-bombs; intervention in Indochina; a five-power peace pact; East-West trade; a genuine antidepression program to meet mounting unemployment; and quick passage of an FEPC law and a full civil rights program.

Whether this bill passes or not, the Communist Party will continue to fight for its legal existence. It will continue to put forth candidates, put forth its program, seek to nominate and elect its candidates and support other candidates in the political arena. In so doing, it is mindful that it represents the fight of all Americans, irrespective of party, for the right to speak, organize, write and assemble.

We know, of course, the present temper of this committee. We are aware that to a man this committee is anti-Communist. But the issue here is not communism: it is the defense of the Constitution. Rejection of this fantistic legislation is not approval of the Communist Party; it is reaffirmation of the basic validity of the Bill of Rights. Rejection of these bills will be a signal to the world that McCarthyism has not conquered our halls of Congress.

To defeat these bills is to defend the rights of all Americans to speak their minds on the issues of the day. To defeat these bills is to defend your own rights, gentlemen. Remember—the rights you save may be your own.

If I may, Mr. Chairman, may I add just a word or two. I hope you will not consider this a gratuitous suggestion, but I am advised that in connection with other legislation, committees have frequently sought

the opinions not only of Constitutional lawyers who were not members of Congress, but also other distinguished citizens. I believe this was done by Senator Kilgore in respect to the so-called immunity bill in the Senate. I may be wrong, but I am quite sure it was done in connection with the McCarran Act of 1950.

May I respectfully suggest, therefore, Mr. Chairman, that this committee take under consideration the question of seeking opinions on the constitutionality of measures of this sort from a representative group of citizens, like John W. Davis, Lloyd Garrison, former Federal Judge Simon Rifkind, Professor Commager, Dr. Alexander Meiklejohn, and many, many others whom I might mention. That is point one.

The second is something of an unusual request. I know it is not completely within the power of the committee to grant it. I understand that there may be hearings after the Easter recess. The Communist Party would like very much to be represented by some persons who might find it difficult ordinarily to be here, to wit, Miss Elizabeth Gurley Flynn and Mr. Pettis Perry, and Mr. Benjamin J. Davis, former city councilman of the city of New York.

Miss Flynn and Mr. Perry are both out on bail in the Southern District of New York pending appeal from a Smith Act conviction. It will require a court order for them to obtain permission to come down here. If time is granted, I believe that such permission will be granted by the court.

The other problem is a little more difficult, since it is in the province of the Federal Bureau of Prisons. Former City Councilman Davis is now in Terre Haute prison serving a 5-year sentence. We would like him to come here and testify.

Permission was granted for him to be a witness in the Pittsburgh Smith Act trials. I cannot of course speak for the Federal Bureau of Prisons, but we are hopeful that an application to it, if this committee is willing to hear him, will be honored.

Mr. GRAHAM. Mr. Gerson, in answer to your three questions, at the moment we are not able to answer you definitely. Whether your request will be granted or not, I cannot tell you. But I assure you it will be brought before the subcommittee for a determination.

Mr. Hyde?

Mr. HYDE. Mr. Gerson, you said at the start of your talk that these bills would pulverize constitutional liberties, and you expressed the fear for our constitutional guaranties of free discussion. Do you contend that the Communist Party in Russia supports anything similar to our constitutional liberties and do you contend that it permits free discussion of political ideas?

Mr. GERSON. Sir, I am not debating the constitution of the Soviet Union in this period. It is a very interesting matter, but I do not think there is any analogy between conditions in their country and conditions in our own. Our Republic has been in existence for more than a century and a half. The Soviet Republic has been in existence for less than 40 years. It has undergone two wars. We do not believe that the historical conditions can be made analogous. We, therefore, are not debating that question. We stand squarely on our own Bill of Rights, on our own Constitution, sir.

Mr. HYDE. Do you deny any relationship between the theories and philosophies of the Communist Party here in America and those in Russia?

Mr. GERSON. I don't deny any relationship between the theories of Marxism in any country in the world. There is some relationship. But I do want to affirm, as we have both in this statement and in all our writings, that the path that the American people are going to follow is going to be determined by specific American historical traditions. We are going to move along our own path. We Americans are going to shape our own destiny. That destiny is not going to be determined for us by anybody else.

Mr. HYDE. Thank you.

I think you have answered the question. Now, on the last page of your testimony, I think you people advocated the FEPC with sanctions, did you not?

Mr. GERSON. We certainly believe in an FEPC with teeth in it, one that can be enforced, yes.

Mr. HYDE. With sanctions, it can be enforced, with criminal penalties. All right.

Now, you are very much alarmed about a law which might jail people or make them criminals if they have political ideas which are generally considered anathema to our form of government or unorthodox, but you have no compunction whatsoever with putting into jail somebody who has religious or racial theories contrary to you. How do you reconcile those?

Mr. GERSON. It is very simple. I refer you to the Declaration of Independence. It says all men are created free and equal; that means colored and white. Our Government is legally bound to take every action within its authority to guarantee the equality of the law. Our Constitution likewise, to my way of thinking, guarantees me the right to differ politically with you, and you with me. So I don't think there is an analogy between the two situations that you indicate.

Mr. HYDE. It says that all people are free and equal. It guarantees that, by a government of law. But that hasn't anything to do with one's personal ideas on the subject. You are willing to put somebody in jail for their personal ideas on the subject but you do not want to put them into jail if they have personal ideas about political theories that might be anathema.

Mr. GERSON. I am sorry, you are not stating my position correctly. I understand as well as the next man that one cannot legislate prejudice out of another man's mind. That can only be done by a process of education. But what we can legislate against is discrimination, in jobs, in eating places, in transportation, in all public functions, in the schools, for example. That is what I am talking about. We support an FEPC with sanction, we support a full civil-rights program for the Negro people. We believe that that comes completely within the power of the Constitution, the power of the Congress, under our Constitution.

Mr. HYDE. That is all, Mr. Chairman.

Mr. GRAHAM. Miss Thompson, any questions?

Miss THOMPSON. No.

Mr. GRAHAM. Mr. Feighan?

Mr. FEIGHAN. You admit, do you not, that the principal tenet of the international Communist conspiracy, which all thinking people know exists today, has as its objective the complete control of and total power over all peoples of the world?

Mr. GERSON. I make no such admission, sir.

Mr. FEIGHAN. That tenet has been early established in the writings of most of the top Communist leaders, from Lenin to Stalin.

Mr. GERSON. I would have to see any quotation along that line, sir. All I am stating here is that the Communist Party has a certain ultimate aim, it states so openly, and that is it wants to win the American people ultimately to supporting that form of government and society that we call socialism. That is our aim. We say it is not a question of the immediate future. Right now we believe that our main problem is to prevent the outbreak of world war III, of an H-bomb war. We think our problem is to prevent our country from going into a tailspin of a new depression. Finally, we think the problem before us is to prevent our country from falling into McCarthyism. Socialism is going to come sometime in the future under conditions determined by the American people under our own historical conditions.

Mr. FEIGHAN. You are representing the Communist Party and not the Socialist Party, is that correct?

Mr. GERSON. That is correct, sir.

Mr. FEIGHAN. Are not the tenets of the Communist Party which you represent, which is subvertly active in this country, the same as the Communist Party beliefs, objectives, that are controlled by and which are formulated in the Kremlin?

Mr. GERSON. The fundamental and long-range aim of the Communist Party of the United States is socialism. We state that, and we state that very frankly.

Mr. FEIGHAN. But if you were to give a direct answer your answer to my question would be "Yes"?

Mr. GERSON. The aim of the Communist Party of Italy is socialism in Italy. The aim of the Communist Party of France, of the Soviet Union, of any other countries, is socialism. But the path by which they will arrive there in each country is a path determined by the national peculiarities of each particular country.

Mr. FEIGHAN. But then is their path not developed, controlled, and agitated by the powers in the Kremlin, whether it applies to any particular nation or within the present Communist empire?

Mr. GERSON. No, sir. The concept of socialism is more than a century old. Long before there was a Soviet Union there were those who advocated socialism in the United States. There were in fact Communist clubs. In fact, President Lincoln commissioned some Communists in the Union Army as far back as 1861.

Mr. FEIGHAN. You are trying, as I see it, to avoid answering my question.

Mr. GERSON. I am trying not to, sir.

Mr. FEIGHAN. Talking about socialism as strictly an economic theory or practice is one thing, but in addition to that the communism which you say embraces socialism, has a good deal more in it than economic theory and practice. It is combined with the objective of world domination and control by whatever methods may be necessary, all of which is directed by the Kremlin.

Mr. GERSON. I think I get the direction of your question, sir. Let me state very bluntly the Communist Party believes that the American people and only the American people are going to be the masters of their own destiny. Just as we do not want to be anybody's master, we do not intend to be anybody's slave. We are not proposing to place

the United States under the domination of any other nation or group of nations.

Mr. FEIGHAN. Is it not very, very strange, then, if the pattern of action, of thoughts, of what you call the Communist Party changes every time the masters of the Kremlin change?

Mr. GERSON. I say there is a change in the thinking of all Americans, based on the change in the world situation. The Government of the United States has changed its policies on a whole series of occasions, based on what they considered sound and sufficient reasons in the world situation. Similarly, the Communists have.

Mr. FEIGHAN. But is it not strange that every time the Kremlin makes a change, the Communist Party in the United States of America makes a change? In other words, what you are attempting to establish is that as a member of the Communist Party in the United States, you are not part and parcel of the Communist Party in the Kremlin, whose sole objective is to conquer the world?

Mr. GERSON. The answer, sir, is no, and I would suggest a careful study of our draft program. Then I would be very happy to discuss the matter with you.

Mr. FEIGHAN. I noticed here that you said, "clearly any policy promised on the theory of Soviet aggression against us is a policy based on a colossal historical lie."

In view of that statement, what is your reaction to the incidents that took place since the inception of World War II, whereby the Kremlin, the seat of the Communist conspiracy, has taken over by various and devious means, including the illegal use of legal and solemn treaties and agreements, these many once independent countries in Central and Eastern Europe and the Baltic States?

Mr. GERSON. I would like to answer your question this way, Mr. Feighan: I hope you will not think it is presumptuous of me to suggest that you take a little compass, put the point on the city of Moscow on a European map and draw a series of concentric circles. Take the same compass, put the point in the city of Washington and draw a series of concentric circles. Then go back to your first map and take a look at all of the bomber bases that we Americans have within those concentric circles on the European map. Then go back to your second map, of our country, and take a look and try to find whether there are any Soviet bomber bases on that map. I think that answers the question.

Mr. FEIGHAN. That is no answer to my question, but is a typical Communist dodge. But I will answer your propaganda statement by saying that if there is none, the obvious reason is because the agents of the Kremlin have not been able to penetrate and take over control of those areas.

Mr. GERSON. But the fact of the matter is, for whatever reasons, there are none. We have American military naval and air bases throughout the world. I think that is pretty well recognized. To the best of my knowledge, there is not a Soviet base outside of the countries in which they are permitted to have bases by agreement with their allies of World War II.

Mr. FEIGHAN. It appears you suffer from a peculiar kind of knowledge. To get back to my question, do you approve of the method by which the international Communist conspiracy has taken over these nations who for centuries have had their freedom and independence?

Mr. GERSON. I think you and I disagree on definition, sir. I don't think China was taken over by the Kremlin. And I don't think the white paper put out by our own State Department would support your theory on that position.

Mr. FEIGHAN. Well, let's take the Baltic States, Estonia, Latvia, and Lithuania. Take Czechoslovakia. Take Poland. Take Romania, Hungary, and Bulgaria, Albania. Do you approve of the way the Kremlin and its Communist policy has ruthlessly subjected these people who were, for centuries, independent and free, and subjugated them, with mass deportations of the non-Russian nationalities to slave labor camps?

Mr. GERSON. You are making a whole series of assumptions there, with which I cannot agree. Therefore, obviously I cannot agree with your question.

Mr. FEIGHAN. It is becoming clear that you agree only with the Kremlin. There are certain fundamental questions that should be answered by you. Do you approve of the takeover by the Kremlin of any of the Baltic States? I will make it very concise. We will get this down to a yes or no question.

Mr. GERSON. My answer is that I don't believe that those countries were taken over by the Soviet Union.

Mr. FEIGHAN. You wish to say that you deny a factual situation that has been corroborated by expert witnesses and documentary evidence?

Mr. GERSON. I have stated my position.

Mr. GRAHAM. Mr. Hyde wishes to ask a further question.

Mr. HYDE. When I was asking you some questions, Mr. Gerson, you denied or you attempted to create the impression that you were denying that there was any relationship between the Communist Party in America and that in the Kremlin, and yet in response to one of Mr. Feighan's questions just a moment ago, when you were giving your description about concentric circles around Moscow and concentric circles around Washington, you asked us to take a look, when you referred to Russia, to what "our country" was doing.

Mr. GERSON. By "our country" I referred to your country and mine, Mr. Hyde, the United States of America.

Mr. HYDE. You referred to Russia.

Mr. GERSON. I beg your pardon, sir, and I wanted to give no such interpretation. I want to say I resent that very deeply, sir. I was a member of our Armed Forces. I am very proud of that. I am proud of my Americanism, and I don't yield to any man, despite the unorthodoxy of my views.

Mr. HYDE. The fact that you were a member of our Armed Forces doesn't mean anything, Mr. Gerson. We have had traitors in our Armed Forces.

Mr. GERSON. You are not implying anything about me, are you, sir?

Mr. HYDE. No, but I say that the fact that you were in our Armed Forces does not mean——

Mr. GERSON. When I spoke of "our country," I meant your country and mine, the United States of America, and no other country.

Mr. HYDE. We will see how it is in the record. Thank you.

Mr. GRAHAM. Mr. Gerson, Mr. McCulloch of Ohio, a member of the full committee, has come in. Yesterday I invited any members to come in that wished to.

Do you wish to ask any questions, Mr. McCulloch?

Mr. MCCULLOCH. No questions.

Mr. GRAHAM. Very well.

Thank you.

The next witness is Justice Michael Musmanno, of the Pennsylvania Supreme Court.

Would you identify yourself for the record, please, Justice Musmanno.

STATEMENT OF MICHAEL A. MUSMANNO, A JUSTICE OF THE SUPREME COURT OF THE STATE OF PENNSYLVANIA, PITTSBURGH, PA.

Justice MUSMANNO. For the purpose of the record, I identify myself as Michael A. Musmanno, of Allegheny County, Pa., at present a justice of the Supreme Court of Pennsylvania.

Mr. Chairman, and members of the committee, I listened with a great deal of interest to the statement made by Mr. Gerson of the Communist Party. Before I take up my presentation in behalf of House bill 7894, I would like to make some brief references to remarks made by Mr. Gerson. Eventually, after I have been supplied with the text of his statement, I would like to reply to it paragraph for paragraph, in writing or in any other form that the committee might desire.

I would be glad to appear tomorrow, in the meantime having been supplied with the full text. I was not able to follow, because Mr. Gerson from time to time dropped his voice and therefore I was unable to follow in detail the statements which he made.

Mr. GRAHAM. Do you have a copy of the full statement?

Justice MUSMANNO. No, I do not.

Mr. GRAHAM. We will be glad to give you one.

Justice MUSMANNO. But I did hear his last remarks which very properly I think provoked a remark from Mr. Hyde as to whether Mr. Gerson was speaking of the United States or Russia when he referred to "our country." I noted the simulated anger on the part of Mr. Gerson when it was suggested that possibly he was referring to Russia as his country. I would like to say to this committee, fully cognizant of the significance of my remarks, that no one can be a Communist and still refer to the United States of America as his country. Anyone who is a Communist has allegiance to Russia, and the International Communist conspiracy, and therefore cannot be loyal to the United States of America.

He referred to the fact that there were 15,000 Communists who lost their lives in World War II. I do not doubt, members of the committee, that in the blanketing universality of the conscription law, many Communists and other undesirable citizens were drafted. But the test is not whether they served in World War II after Pearl Harbor; the test as to whether they are loyal to the cause of democracy is whether they enlisted in the Allied cause before June 21, 1941, when Hitler then stabbed his partner Stalin in the back.

Had it not been for these two devils of Hitler and Stalin, who crucified Poland and precipitated World War II, we would not now have the crises, the troubles, the sorrows, which are threatening the very demolition of the United States and of the human race. It all goes back to that evil day when Communists were not enlisting in the Army to fight Hitler and Stalin. They were picketing the White House, crying out "The Yanks are not coming."

It was only after Hitler betrayed his brother bandit that then they were willing to reply to the conscription law.

Another statement made by Mr. Gerson was that in 35 years there has not been one Communist convicted of treason.

Mr. Chairman, that is a play on semantics. There have been scores, if not hundreds, of Communists convicted of treasonable activities. I, myself, helped to convict Steve Nelson, the field general of the Communist Party of the United States. The Smith Act is listed in the United States Code under the general title of treason, sedition.

Mr. McCULLOCH. Mr. Justice, is it possible to convict any one of treason in the United States when we are not at war with a foreign country?

Justice MUSMANNO. It is possible.

Mr. McCULLOCH. It is possible to convict a man of treason?

Justice MUSMANNO. Yes, because treason is defined as giving aid and comfort to the enemy. These convictions that I speak of were under sedition acts, were under espionage acts, and it is merely a play on words to say that no one has been convicted of treason. Of course, technically, under the Constitution, they have not been tried, but they certainly have been convicted of, treasonable activities, and I regard Steve Nelson as a traitor in an unconscionable degree.

Mr. McCULLOCH. Mr. Chairman, might I pursue this?

I have no question or no fault with your general analogy. I am trying to get at a very technical matter before the subcommittee of this committee of which I am a member. We have a proposal to amend the Constitution of the United States to redefine treason. That very play on semantics and that very difficulty or the impossibility of trying and convicting a person for treason except in time of war is a question that is before our committee. That is the reason I wanted to pinpoint this thing.

I would like to ask the question again: In your opinion, Mr. Justice, is it possible to convict anyone in America of treason as defined by the Constitution when we are not at war?

Justice MUSMANNO. I would say that it is possible, but not necessary because we have enough statutes on the book in that regard to take care of those who are engaged in treasonable activities in a state of technical peace.

Mr. McCULLOCH. What I am trying to get at is, is it in your opinion, Mr. Justice, possible to convict a person of the technical crime of treason as defined by our Constitution in time of peace.

Justice MUSMANNO. We know that Aaron Burr was tried on a charge of treason, and certainly we were not at war at that time.

Mr. McCULLOCH. Were the overt acts committed in time of war?

Justice MUSMANNO. No, it was after the Revolutionary War and yet he was brought to trial before Chief Justice Marshall and, of course, as Mr. McCulloch knows, he was acquitted.

Mr. GRAHAM. That happened around the year 1804 or 1805.

Justice MUSMANNO. That is correct, Mr. Chairman.

Mr. MCCULLOCH. Do you know of any indictments for treason in recent years as defined by the Constitution?

Justice MUSMANNO. I would say I do not know of any such, Mr. McCulloch.

Then there was one remark which Mr. Gerson made which I just cannot help allow to go unreferred to because it touches me deeply. As one, and this is true of every good American, who regards the name of Abraham Lincoln as one sacred to America, I resent his reference in the manner in which he put it, in which he said that Abraham Lincoln had Communists on his staff.

That statement is a contemptuous, pusillanimous falsehood, capable of falling only from the lips of one who takes his truth from Moscow, honor from Malenkov, and decency from the vilest ponds of deceit.

He quoted Justice Jackson, you may be sure completely out of context, and then said that in these days, turmoil and crises, that there should be no bill outlawing the Communist Party because it would curtail discussion, it would gag truth, it would prevent people from discussing wholeheartedly and candidly the problems which are besetting the Nation.

Mr. Chairman, let me quote Justice Jackson on that subject. In his opinion in the Dowds case, he was discussing what rights Communists and others have. They may discuss any subject. They can, and now I am quoting—

> can persuade enough citizens, they may not only name new officials and inaugurate new policies, but, by amendment of the Constitution, they can abolish the Bill of Rights and set up an absolute government by legal methods. They are given liberties of speech, press, and assembly, to enable them to present to the people their proposals and propaganda for peaceful and lawful changes, however extreme. But instead of resting their case upon persuasion and any appeal inherent in their ideas and principles, the Communist Party adopts the techniques of a secret cabal—false names, forged passports, code messages, clandestine meetings. To these it adds occasional terroristic and threatening methods, such as picketing courts and juries, political strikes, and sabotage. This cabalism and terrorism is understandable in the light of what they want to accomplish and what they have to overcome.

Congress is not concerned with the individual who, outside the Communist Party, advocates a peaceful change, no matter what that change may be. There have not been lacking agitators and zealots urging even preposterous changes in our Government. Nor have these proposals been limited to the soapbox or even political campaigns. In my book, Proposed Amendments to the Constitution, I list proposed amendments introduced in Congress which today must certainly seem grotesque. In 1893 Mr. Miller of Wisconsin proposed the Constitution be amended to rename this country "The United States of the Earth." His resolution also declared that "the Army and Navy, including the Army and Navy schools of organized murder, are hereby abolished."

Another resolution provided that "the House and Senate shall vote by electricity."

One proposed amendment provided that the House of Representatives should have exclusive power of legislation, the Senate to be abolished, not responsible to the Supreme Court, and that on petition of 5 percent of the qualified voters any bill passed by the House of Representatives could be subjected to a referendum and that a majority of all votes cast could veto the law. There have been over a score of amendments calling for repeal of the 15th Amendment.

In the recent decision of the Supreme Court of the United States, *Harisiades* v. *The United States*, Justice Jackson pinpoints the very answer to what Mr. Gerson said:

> The claim is that in joining an organization advocating overthrow of government by force and violence the alien has merely exercised freedoms of speech, press and assembly which that amendment guarantees to him. The assumption is that the First Amendment allows Congress to make no distinction between elective processes and advocating change by force and violence, that freedom for the one includes freedom for the other, and that when teaching of violence is denied so is freedom of speech. Our Constitution sought to leave no excuse for violent attack on the status quo by providing a legal alternative—attack by ballot. To arm all men for orderly change, the Constitution put in their hands a right to influence the electorate by press, speech and assembly. This means freedom to advocate or promote communism by means of the ballot box, but it does not include the practice or incitement of violence.

Now I would like to proceed to my presentation and argument in behalf of House bill 7894.

The invitation extended to me to appear before this distinguished committee is indeed a great honor which I shall always cherish. Knowing of the great burdens to which you are subjected during these crucial times in living and writing the legislative history of America, it is my respectful wish that my presentation may be of some service to you in your deliberations on this most important bill presented by your able colleague Representative Martin Dies of Texas.

The purpose of House bill No. 7894 is to outlaw the Communist Party of the United States, and all other organizations no matter how named, committed to the overthrow of our Government by force and violence. Of course the enactment of this bill into law will be the means of taking legal cognizance of what now exists, for it is obvious that in morals, ideals, and American traditions, the Communist Party is already, in grim reality, an outlaw organization.

The American people saw, with horror, only 5 weeks ago, how armed emissaries of this very organization invaded the sacred halls of American democracy and poured a murderous fire upon you and your colleagues in the House of Representatives, leaving bloodstains on the floor that has known the footsteps of American Presidents and immortal statesmen of this great Republic down through the years of our country's illustrious history. How much further must the Communist Party go before our statute books proclaim its banishment from the American scene? In the judgment of the American people the Communist-inspired outrage of March 1 represents the ultimate in outlawry. It symbolizes, with factual, stark authenticity, the scorn and contempt for law on the part of international communism.

And the whole world of decency awaits the decision of the American Congress as to how the countless acts of infamy and treason on the part of the Communist Party during the last 30 years—acts which threaten the security of every American home—will at last be met.

The threat to our national security, the menace to our domestic tranquility, and the challenge to our peaceful future by the Communist Party have already been recognized by the Congress of the United States, by the courts of the United States, and by the good people of the United States. Knowing full well, then, that the Communist Party has but one purpose and that is to carry out the Moscow-laid plans for world revolution, which include the destruction, of which the attempted massacre of March 1st was but a fragment, of the

entire American structure of government, why do we still assign to the Communist Party a legal status?

On September 30, 1950, the American Congress, after years of investigation, inquiry, and direct observation, legislatively declared that the Communist organization in the United States presents "a clear and present danger to the security of the United States."

On June 5, 1951, the Supreme Court of the United States, speaking through the late Chief Justice Vinson, declared that the action of the top leaders of the Communist Party created a "clear and present danger" of the attempt to overthrow the Government of the United States.

With grave, official pronouncements of this kind, how is it that in the Capital of the Nation, in New York City, and practically every large city of the country, the Communist Party maintains headquarters in the objective development of its plans to overthrow the Government by force and violence? The New York Times, on Sunday, March 14, 1954, carried this story from Caracas, Venezuela:

> By a vote of 17 to 1, the Tenth Inter-American Conference adopted today an anti-Communist resolution advocated by the United States. It was designed to serve as a warning to the Soviet Union to keep out of the affairs of the Western Hemisphere.

This news story strikes me as being solemn irony. Down in Venezuela we speak of keeping the Soviet Union out of the affairs of the Western Hemisphere and here we have the Soviet Union operating on our very doorsteps. We tell the South American countries to ban the Communists and here we permit them in the Armed Forces of the Nation. It is no wonder that on the following day, March 15, Ludwell Denny, Scripps-Howard foreign editor wrote:

> The Communist menace in this hemisphere remains as big as before, despite the United States resolution passed by the Inter-American Conference at Caracas.

When the United States shows it means business by outrightly outlawing the Communist Party, then we can hope to be of some real influence in convincing South Americans that they should kill the Red snake operating in the paradise of their lush coffee plantations.

You know very well, every member of this distinguished committee, that William Z. Foster, national chairman of the Communist Party, has declared:

> When a Communist heads the Government of the United States—and that day will come just as surely as the sun rises—the Government will not be a capitalist government but a Soviet government and behind this government will stand the Red Army to enforce the dictatorship of the proletariat.

Mr. Gerson made no comment on that.

This simply means that every Communist headquarters in America is an advance post of the Red Army. Every Communist between the Atlantic and the Pacific is a Soviet paratrooper already landed here. Why, then, is the Communist Party allowed, not only to maintain these advance posts, but to use our telegraph, telephone, and wireless facilities for the transmission of revolutionary plans? Why is this revolutionary organization permitted to transmit through the United States mails, an eight-page communique every day, keeping its Bolshevist members throughout the Nation informed on the newest objectives of the Kremlin?

If the situation were not so tragic, it would be sheerly ludicrous the way our Government services are generously placed at the disposal of these unwashed traitors. On August 31, 1950, the sheriff of Allegheny County, Pa., served a search and seizure warrant, issued at my behest, on the Communist Party headquarters in Pittsburgh. While we were examining the seditious material in those headquarters, the mailman, a postman of the United States, arrived with a letter from Moscow for Steve Nelson, district organizer of the Communist Party in that part of the United States, and the field general for the Communist forces in the whole country. The gray-clad mailman also delivered a large package from Moscow directed to James Dolsen, notorious international revolutionary and charter member of the Communist Party of the United States. Thus, the Communists use the facilities of the United States Government in their plans to destroy the United States Government. What a paradox. What an absurdity. What a disgrace.

Why has the Communist Party not been outlawed heretofore? The principal argument advanced against illegalizations of this traitorous organization is that it is a political party. With all the earnestness at my command and with due respect to those who may intellectually disagree, and that does not include Mr. Gerson, because he does not disagree intellectually but ideologically, I must in all candor say, nonetheless, that anyone who today says that the Communist Party is a political party is either abysmally ignorant or culpably false. The Communist Party in the United States is an extension of the Soviet foreign office. It is not a political party.

As a private citizen I was on the witness stand for 31 days testifying against the Communist leaders Steve Nelson, James Dolsen, and Andrew Onda, the last-named person being the leader of the Soviet infiltration crew into the steel industry in the country. In preparing for the trial against this revolutionary trio, I examined every book, pamphlet, circular, periodical, note of correspondence, and every item of equipment in the Communist headquarters of western Pennsylvania. I did not have a chance to see this pamphlet which Mr. Gerson presented. I would like to see it before I appear tomorrow to see what that contained. In that meticulous search that I made in 1950, before I testified, in that search I did not find 1 document or 1 piece of paper which had to do with political parties as we understand political parties in America. In preparing for that trial I read 296 books and 242 documents taken from the headquarters. On every page of these books and documents I found either laudation of revolution, Leninism, Stalinism, and the whole Communist system, or insults, blasphemies, and scurrilities heaped on America, Americans, and the American way of life.

As an officer in the United States Navy, as president of the United States-Soviet Board of Forcible Repatriation in Austria, and as a judge at the International War Crimes Trials in Nuremberg, I had occasion, over a period of 5 years, to visit many Communist headquarters in various parts of Europe. The Communist headquarters in Pittsburgh could well have been a duplicate of any of the hammer and sickle headquarters in Berlin, Vienna, Budapest, Prague, or Belgrade. In those 4 rooms located in the very heart of the Golden Triangle in Pittsburgh I found not a book containing the Constitu-

tion of the United States, but copies of the Constitution of the Union of Soviet Socialist Republics were as plentiful as pictures of Vladimir Lenin who, with beard bristling, stared at me from scores of vantage points in the sovietized locale.

In addition to the Pittsburgh headquarters, I visited some 30 Communist headquarters in the States of Pennsylvania, New York, Ohio, and Massachusetts. In each one of them the walls proclaimed the Soviet empire, the Soviet flag, and the Soviet prophets; the shelves sagged with books on Soviet history and worldwide revolutionary propaganda; but nowhere did I find one American flag. You would think that the relatives of some of these 15,000 Communists who were killed in World War II, if they really believed in America, would have seen to it that an American flag would have appeared in one of these 30 Communist headquarters that I visited. I found not one American history or one American Constitution which the Communists are so eager to flourish when they appear in court charged with violating the laws of the land. In the Communist national headquarters in New York I offered to pay for an advertisement in the Daily Worker urging its subscribers to read the United States Constitution and an American history book at least once a year. The offer was, you can well imagine, refused.

The Communist Party is not a political party. The four books of the Communist Party which constitute their Koran, chart, program, and modus operandi contain not one appeal to the election polls in democratic fashion. The Communist Manifesto, which is the bloody shirt of revolution, is a panegyric to rebellion. Lenin's masterpiece, State and Revolution, is a fiery appeal to armed insurrection. The Foundations of Lenin by Joseph Stalin is a battle directive for overthrowing democratic institutions. The History of the Communist Party, as it itself proclaims, is not a history but a guide to action—that is, revolutionary action.

The argument has been advanced, Mr. Chairman, that outlawing the Communists will drive the Communists underground. This argument is as fallacious as the contention that the Communist Party is underground now. The early followers of Christ, in the catacombs of ancient Rome, toiled with blood and brawn to build the pillars of Christiandom supporting the cathedral of faith in the infinite and confidence in the brotherhood of man. The Communists today in the subterranean cells of perfidy are working blasphemously to tear those pillars down. And with that demolition they intend to raze the American home and all the freedom-loving institutions which have made America the great land of opportunity and the fulfillment of the dreams of your congressional predecessors, the Founding Fathers of our beloved country.

The most notorious Communist traitors that we have uncovered were all underground moles gnawing at the foundation walls of American democracy. Alger Hiss, who stole secret documents from the State Department and conspired with Soviet agents, was an underground Communist; William Remington, who betrayed the United States in the Commerce Department and War Production Board, was an underground Communist; Whittaker Chambers, who lugged brief cases bulgingly full of purloined Government secrets, was an underground Communist; Judith Coplen, who thieved classified material from the Department of Justice, was an underground Communist;

Elizabeth Bentley whose revelations of the wholesale perfidies in the various Government departments shocked the Nation, was an underground Communist; Harry Dexter White, who represented Stalin in the Treasury Department of the United States and arranged the transfer to Soviet occupation forces in Germany of one quarter of a billion dollars filched from the pockets of the American people, was an underground Communist; Julius and Ethel Rosenberg, Harry Gold, Henry Fuchs, David Greenglass, and all those monsters in perfidy who stole from our laboratories the scientific secrets which may some day lay our country open to the forked lightning of hell-splitting nuclear blasts, were underground Communists.

Congressional investigations during the last 12 years have lifted the outer crust of the earth's surface in official Washington and exposed scores of Communist traitors, Soviet saboteurs, espionage agents, all plotting and working underground. Right here in the Capitol, on Senate and House Committees, there were betrayers acting as counsel who, while apparently engaged in helping to erect legislative superstructure, were in fact underground sawing away at the very supports of the State.

The Communist Party in the United States has been underground for a long time. In March 1951, FBI Director J. Edgar Hoover, a constant defender of the security of our country, in an interview in the United States News and World Report, declared that most of the Communist Party activities were underground. And as late as last month in the American Legion magazine he repeated that:

> Almost all Communist Party activity is being carried on in a disguised manner. Many of the top leaders have gone underground and the rank-and-file membership carry on party activities through Communist-front organizations and even through infiltrating legitimate organizations.

Director Hoover then relates how Communists have fitted into parent-teacher associations, church, civic, and similar groups in which one would not expect to find Communists.

Louis Budenz, who was a leading member of the Communist conspiracy for many years, emphasizes in his book, "The Cry Is Peace," that the Communist Party "has always been 95 percent underground," adding that it has "the advantage, however, of legality of the open functioning of the part of its apparatus which runs newspapers, uses telephones, and has offices."

In March 1950, when I was presiding over the criminal courts in Allegheny County, Pa., I found a woman Communist on the grand jury. She could have had only one purpose and that was to corrupt American justice. I dismissed her, but the dismissal did not endure. The appellate court held that since it was not illegal to be a Communist, she should not be deprived of her right to sit on the grand jury. And herein lies the tragic contradiction. The courts juridically declare that the Communist Party has but one object and that is the violent dismantling of the whole American Commonwealth, including court houses, city halls, State legislatures, and the National Congress, yet the Communists may continue to ply their traitorous work of destruction because they are still citizens.

From time to time we hear of some incredible miscarriage of justice where a subversion is involved. How do we know that a Communist is not on the jury? The enactment into law of H. R. 7894 would

keep Communists off the grand juries and petit juries, it would bar them from the Army, Navy, Air Force, Marines, and Coast Guard; it would weed them out of the universities, colleges, and schools; it would exclude them from police and detective squads; it would lock them out of hospitals as doctors and nurses; in fact, it would keep them out of every decent American institution and activity except prison where they should be, like all other criminal conspirators, felons, and malfeasers.

As late as March 17, just 2 weeks ago, Charles E. Wilson, Secretary of Defense promulgated a directive which provides that any person inducted into the armed services who fails to execute a loyalty certificate shall not be assigned to sensitive duties. While I served in both World Wars, I certainly cannot presume to speak expertly on military matters. Yet I would say from general observation alone that there is no such thing as a nonsensitive post in the armed services. No part of the machinery of war can be tampered with, as no device on a dynamo can be damaged, without disastrous effects of some degree to the whole. And why should we hand a rifle, a bayonet, grenade, or opportunity of sabotage to persons who refuse to declare their loyalty to the United States. It all sounds like fantastic nonsense in a topsy-turvey world.

It is not Secretary Wilson's fault, however, that he must issue directives that read as if penned by the hand of Lewis Carroll. Our present laws permit fifth amendment Communists not only to pull teeth but to sight the guns of our artillery. There was a time when our history books were stained with the names of but two traitors—Benedict Arnold and John Wilkes Booth. Now a card index system is needed to catalog the Judases that would betray America into the hands of her enemies.

On August 24, 1953, the Internal Security Subcommittee of the Senate Committee on Judiciary shocked the Nation with its report that the following high-ranking officials had handled excavating tools in the Communist underground: An executive assistant to the President of the United States, Assistant Secretary of the Treasury of the United States, Director of Office of Special Political Affairs for the State Department of the United States, Secretary of the International Monetary Fund, head of Latin-American Division of Office of Strategic Services for the United States, Secretary and a member of the United States National Labor Relations Board, Chief Counsel of the United States Senate Subcommittee on Civil Liberties, Chief of the Statistical Analysis Branch, United States War Production Board, United States Treasury Department representative at meeting of Council of Foreign Ministers in Moscow, Director of national research project of the United States Works Progress Administration, and the United States Treasury attaché in China.

With all this, opponents of this measure will still say that its passage would drive the Communists underground. How much deeper can they go? The enactment of the Dies bill into law would have the opposite effect; it would drag the burrowing betrayers out into the open where they can be seen in the light of day. All Communist headquarters, newspaper plants, publishing houses, and meeting places are the manhole covers which conceal the traitorous work underneath. The time has come to rip away the manholes from the black depths

in which the subterranean traitors are digging and hammering at the very foundations of our country.

And, Mr. Chairman, the dignity of the United States demands that criminal prosecutions be based on reality of circumstance and not on diversionary incident. There have been numerous convictions of Communists for perjury when we know that the gravamen of their offense was clandestine plotting against our national security. Last week a jury here in Washington very properly convicted the Muscovite mole, Ben Gold, who as president of the International Fur and Leather Workers Union, has used his powerful union in the furtherance of the perfidious plans of the Communist Party of which he was a powerful leader. With the passage of the Dies bill, the membership in all Kremlin-directed unions will be emancipated from the domination of their Sovietized commissars, and this would include the International Longshoremen and Warehousemen's Union under the control of the Marx-Leninist Harry Bridges, who wields in his infamous grasp a meretricious control which could paralyze shipping in the Pacific and thus cripple our defenses in the farflung outposts of Hawaii and other oceanic bases.

Mr. GRAHAM. In this room 16 years ago myself and another man served on a committee to inquire into the conduct of Harry Bridges. We filed a minority report that he was a Communist and ought to be deported. He is still here.

Justice MUSMANNO. That is one of the disgraces of the present situation.

Mr. GRAHAM. Proceed.

Justice MUSMANNO. Thank you, Mr. Chairman, for that very enlightening observation.

To those who contend that the outlawry of the Communist Party would constitute an unconstitutional act I would pose the question: Why would such an act be unconstitutional? Is our Constitution so anemic in bodily strength, so deficient in reasoning, and so lacking in reserve that it does not possess the power to protect and perpetuate itself? W. E. Gladstone, the celebrated British statesman, described the United States Constitution as "the most wonderful work ever struck off at a given time by the brain and purpose of man." Is this monumental charter, this blueprint of freedoms, which has built the greatest government that has ever lived in the tide of times, capable of guiding the American people in everything but its own self-preservation?

The goal of the Communist Party is clear, definite, precise, and admits of no equivocation, evasion or subterfuge: it is to destroy the Constitution of the United States. As a judge in Allegheny County, I ordered one day the sequestration of certain subversive literature being distributed by the Communist Party. One of their leaders, Andrew Onda, came into court and asked for the return of the literature on the ground that the Constitution of the United States authorized him to disseminate propaganda, even though it advocated the overthrow of our Government by force and violence. My response was that the Constitution is not so fatuous as to invite its own destruction and I added that "the Constitution will not protect the hand that is trying to drive a sickle into its heart."

To those who raise the question of constitutionality, I would say: "Why can we not outlaw the Communist Party?" We have outlawed

burglary, robbery, kidnaping, murder, arson. The Communist Party stands for what is more evil than all these heinous crimes because it foments bloody revolution. But it seeks to do more than that. The Communist Party seeks to assassinate the very soul of mankind. It would destroy religion, without which life is meaningless; it would shatter the standards of morality, without which there is no honor or shame. I need not recall to you, because you are all intense students of this material, that Lenin said:

> We say that a morality taken from outside of human society does not exist for us; it is a fraud.

Under the broad police powers of our Government, Congress can take any action needed to preserve the state. The very preamble of the Constitution proclaims that its purpose is to "insure domestic tranquility," "promote the general welfare, and secure the blessings of liberty." Article IV, section 4 of the Constitution expressly provides:

> The United States shall guarantee to every State in this Union a republican form of Government.

The Communist form of government, which is known as the dictatorship of the proletariat, is the violent antithesis of a republican form of government.

Chief Justice Vinson, speaking for the Supreme Court, said in the case of *Dennis* v. *United States*, from which I have already quoted:

> We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence.

James Madison, one of the architects of the Constitution, wrote:

> The right of a Government to maintain its existence—self-preservation—it is the most pervasive aspect of sovereignty.

Chief Justice Fuller, in 1903, in the case of *Turner* v. *Williams* (194 U. S. 394) said:

> So long as human governments endure they cannot be denied the power of self-preservation.

Justice Frankfurter, in a concurring opinion in the Dennis case, wrote in 1951:

> The most tragic experience in our history is a poignant reminder that the Nation's continued existence may be threatened from within. To protect itself from such threats, the Federal Government is invested with all those inherent and implied powers which, at the time of adopting the Constitution, were generally considered as belonging to every government, as such, and as being essential to the exercise of its function. Justice Bradley in Legal Tender Cases (13 Wall. 457, 554, 556).

Our Federal courts have made the clear and definite pronouncements that—

> Congress can authorize employment of any appropriate means to serve a legitimate public end (*U. S.* v. *Martin*, 136 F. 2d 388).
>
> Congress, having decided upon a legitimate end to be attained and a policy adapted to its attainment, may choose the means for its accomplishement (*Egan* v. *U. S.* 137 F. 2d 369).
>
> Every right created by, arising under, or dependent upon the Constitution may be protected and enforced by such means and

in such manner as Congress may, in its discretion, deem best adapted to attain the object (*Hardyman* v. *Collins*, 80 F. Supp. 501).

Congress has general authority to adopt legislation designed to promote welfare of the Nation and its people, similar to police power of a State (*National Maritime Union of America* v. *Herzog* 78 F. Supp. 146).

The Supreme Court, in the case of *Cox* v. *New Hampshire*, declared, "Civil liberties" as guaranteed by the Federal Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.

Chief Justice Vinson, speaking for the Supreme Court in 1947 in the case of *United States* v. *United Mine Workers* (330 U. S. 258, 306), asserted:

> In our complex society there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which is a particular interest may be pursued.

If, because of that loyalty, a citizen may constitutionally be conscripted by the United States Government and shipped overseas to undergo military hardships and even the risk of losing his life, on what possible reasonable basis can it be argued that the Government does not have the right to pronounce as illegal the organization against which the conscripted soldier is to fight? We know, and it has been so congressionally and judicially recognized, that the Communist Party in the United States is but a detached segment of the international Communist organization, the only possible enemy against which military might must be arrayed today.

It is usually argued by those opposing the outlawry of the Communist Party that such legislation would encroach upon the free speech guaranteed in the first amendment. So long as the nobly proportioned glistening dome of this Capitol shall lift its crowning figure of freedom toward the skies, Congress will never pass any law encroaching upon the freedom of speech. And even if some holocaust would send that figure crashing to the ground and the dome itself should crumble into dust, the representatives of the people of the United States would still never deprive the people of their inherent and inalienable right to discuss their problems and the measures to be taken for their solution. But it would be arrant folly to say that Congress would take no action against those who would destroy the Capitol dome or criminally conspire to shatter freedom in the United States.

Discussing changes in Government through methods prescribed by the Constitution is protected by the first amendment; advocating the forcible overthrow of Government by force and violence is not protected by the first amendment or any other part of the Constitution.

Chief Justice Vinson in the case of *Communications Association* v. *Douds* (339 U. S. 382), pointed out that under the first amendment one is permitted to believe what he will and he may advocate what he will "unless there is clear and present danger that a substantial public evil will result therefrom. It does not require that he be permitted to be the keeper of the arsenal."

And, again in the Dennis case, where the very subject of the Communist Party was involved, the Supreme Court declared:

> Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected.

Propagandists of the Communist Party argue that while it can be conceded that the Government has the right to put down insurrection, it may not punish merely in anticipation of rebellion. But when is the Government to step in? Must it wait until the first bomb is thrown and the first Government building demolished? The Supreme Court answered this question in the Dennis case by stating that the Government does not need to "wait until the putsch is about to be executed, the plans have been laid, and the signal is awaited."

Overthrowing a government involves an undertaking of such sanguinary magnitude that no legislative body could possibly acquit itself of having discharged its responsibility to the people if it waited until the overthrow was imminent before it acted. It is not up to the Government to gamble its safety against the success of the Communist Party's attempt to obtain the necessary equipment for a triumphant revolution.

The continued recognition of the Communist Party as a legal entity, linked with the fact that Communist bullets in Korea killed 25,000 Americans and wounded over 100,000 more, is wrong—wrong from the standpoint of law, morals, and elemental ethics in conduct between man and man. It cannot possibly be defended in the arena of responsibility to divine intelligence.

There are those who say that to outlaw the Communist Party is to infringe upon civil liberties. In the Pittsburgh Communist headquarters I found a telegram from William Z. Foster, national chairman of the Communist Party, to Steve Nelson, district chairman of western Pennsylvania, urging him to take every action in his district to prevent the sending of guns and ammunition to Korea. To the extent that Communist sabotage impeded the sending of adequate ammunition and equipment to Korea, thus weakening the resistance of American troops against the onslaught of the Red Chinese and North Koreans, the Communist Party must share with the slayers the responsibility for our Korean dead.

I also found on Steve Nelson's desk the copy of a telegram from Steve Nelson to Gene Dennis, general secretary of the Communist Party, pledging in Dennis' honor, because Dennis was just about to go to prison, one traitor pledging himself to another traitor—I was surprised that Mr. Gerson did not ask that Dennis be subpenaed to come here to testify, that he, Steve Nelson, would place 25 Communists in the basic industries of western Pennsylvania. What did this mean except that he was assigning 25 saboteurs and espionage agents to vital tactical spots for the purpose of sabotage at the appropriate moment? And yet, this is what is called civil liberties.

When Steve Nelson returned to Pittsburgh, after having testified before a House committee here in Washington, one of his comrade Communists said to him: "We should get the machineguns and mow those bastards down." To this Nelson replied: "Not yet, George, we are not ready for the machineguns yet."

Those of you who were in the House on that fateful March 1 when deadly bullets whistled through the Chamber may well wonder if the Communists have not decided that the day for the machineguns has arrived.

The whole pattern of our Government is based upon the fair and honorable proposition that any one person's prerogatives terminate where another man's rights begin. This apparently is self-evident in all cases except the Communists are concerned. In my respectful judgment, the duty devolves upon Congress to make this governmental limitation noonday clear to the world by outlawing the Communist Party.

Basically it does not matter, nor is it any of our business, what Russians do and think within the confines of Russia. However, in the incredible state of affairs which obtains in America at the present time with regard to protection for Communists, we are being compelled to devote much of our time, attention, and worry to a Russian enterprise which operates here under the name of the Communist Party of the United States. Therefore, it becomes necessary to point out that the Bill of Rights which the Communists insist upon in the United States simply has no existence at all in Russia.

Andre Vishinsky beats drums of confusion in the United Nations meetings, but in Russia he speaks with trumpet blasts which scatter all doubts as to his meaning. In his book, the Law of the Soviet State, he says:

> In our state, naturally there can be no place for freedom of speech, press, and so on, for the foes of socialism.

We are not speaking of socialism as advocated by Norman Thomas, that is something different.

> Every sort of attempt to utilize to the detriment of the state * * * those freedoms granted to the toilers must be classified as a counterrevolutionary crime.

In discussing the large Communist population in France and Italy, some critics have been asking: "Of what avail has it been to spend billions of dollars to win these two countries to the Atlantic defense of democracy when the Communists case the largest single block of votes in their respective elections?"

Mr. Gerson referred to that. He told you of the great numbers of Communists in Italy and France.

My answer is that this vote would have been drastically curtailed if we had demonstrated by example, instead of by speech alone, that we really mean what we say about communism.

In the 1953 elections in Italy, the Italian people were told by the Red propagandists that it is not true that the United States condemns communism. And in support of this argument they called attention to the fact that a former Vice President of the United States was the candidate of the Communists for the Presidency of the United States, that some of the highest officials in the United States Government have been Communist sympathizers, that the Communists maintain rendezvous in the heart of our large cities, that the Communists publish newspapers and send them through the mail, mostly at the expense of a Government subsidy. The wearisome story was told of how the Secretary of State of the United States, after Alger Hiss had been convicted of a crime which embraced Communist Party membership, declared that he would not turn his back on him. The

people of Europe know, because the Communists see to it that they are kept informed, how Communists in America thrive in the professions, in the arts, in the entertainment fields, in business. The people of Europe know that Communists may serve on juries, enter the armed services of the Nation and participate in the full life of America. How then can we expect European countries to exercise Communists when here in America they are protected, defended, and promoted?

It is generally assumed that the McCarran Act is a strong anti-Communist measure because its intention is to count and catalog the Communists. How will that registering, if and when it takes place, protect the people of the United States? The Communist Party will still be an active branch of the Soviet foreign office, it will still utilize our facilities for obtaining and transmitting vital defense information to the revolutionary planners in the Kremlin, it will still have the assistance and the cooperation of the Communist-controlled unions.

Although Senator Pat McCarran is one of the Nation's most vigilant and redoubtable foes of communism, his bill was subjected to such hammering in the legislative processes that there entered into it a provision which practically nullified the intention of the measure. Section 4, subsection (f) reads in part:

> Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (2) or subsection (c) of this section or of any other criminal statute.

This section, unless repealed or overridden by other legislation, perpetuates the Communist Party in the United States and guarantees sanctuary to its members. Section 5, also, permits and perpetuates to Communists the right to run for any Federal office within the Constitution and the laws of the United States.

Speaking before the House Appropriations Committee in the early part of 1954, J. Edgar Hoover stated that the Communist Party "poses a major and dangerous threat to our national security." We are supposed to meet this dangerous threat by advancing with penholders and asking the Communists to write their names in a book.

The Communist Party should have been outlawed in 1936 when Congress made its first findings on the Red international conspiracy for world revolution. Had this been done, it is possible that World War II would have been averted because Hitler would never have attacked Poland without Stalin's assistance, and Stalin would never have dreamed in 1939 of taking a position which could mean some day challenging the might of America.

In 1933 the United States recognized Communist Russia under a specific compact in which the Soviet Union pledged itself "to refrain from interfering in any manner in the internal affairs of the United States." A year and a half later, representatives of the Communist Party of the United States met and conferred in Moscow with executives of the Communist International to discuss plans for undermining the Government of the United States. Our State Department protested but the Russian Government answered that it had no control over the Communist International. This arrogant and transparent falsehood, which amounted to a declared determination to support the American Communist Party in its plans to overthrow the Government of the United States by force and violence, should have been

enough in itself to withdraw United States recognition of the Red regime and thus repair the tremendous damage of 1933.

But having signally blundered in 1933, 1935, and 1936, there was still time to derail the deadly Communist conspiracy in the United States. In 1938, Congressman Martin Dies introduced a resolution to investigate un-American activities. After 3 or 4 years of vigorous investigation he urged Congress in 1941 to outlaw the Communist Party.

So long as these organizations have a legal status in the United States—

Mr. Dies reported to Congress—

it will be difficult for any agency of the Government to deal with them. We know now that they furnish the legal apparatus for the operation of saboteurs and the window dressing for espionage.

Had Dies' demands for the outlawry of the Communist Party been translated into congressional action, the monopoly of the atom and H-bombs would promisingly still have been ours because all Communists, would, ipso facto, have been shut out of our scientific laboratories, testing grounds, all branches of the Army and Navy, and all departments of the Government.

But having neglected by 1941 to take the course of action so clearly marked out by the searing light of world events, there would still have been time to save America one of its greatest losses and sorrows, had the Communist Party been banned any time prior to the summer of 1950. It is now historically well established that our failure to take a resolute and stern stand against Communism and Communists led the Soviet Politburo to the incorrect conclusion that we would not intervene in the Korean War.

The outlawing of Russia's party in the United States would have supplied the masters of the Kremlin with the correct answer. That enlightening action would have frozen the aggressive forces on the north side of the 38th parallel, and the lives of 25,000 American youth would have been spared.

Mr. Chairman, there is still time to spare the blood of other American youth and the life blood of the world itself. Our scientists are yet working on further offensive and defensive weapons. They must be protected, at all costs, from communist infiltration, Communist espionage, Communist influence, and Communist thievery. No sophistic argumentation, no high-flown dialectics, no spurious bleating about "academic freedom," and "witch hunts" must allow even the shadow of a Communist to fall within the confines of the last great chance to save America and the world of decency, peace and good will to all mankind.

Mr. GRAHAM. We have just received word from the leaders of the House that a bill in which we are all interested, the wiretapping bill, will be called promptly at 12 o'clock. They want us on the floor. In as much as you can remain until tomorrow, we will reconvene at 9:30.

If you do not have time to complete your statement, you can submit it to us.

Justice MUSMANNO. Thank you.

Mr. GRAHAM. We will now adjourn until 9:30 tomorrow morning.

(Whereupon, at 11:45 a. m., the committee was recessed, to reconvene at 9:30 a. m., Thursday, April 8, 1954.)

46150—54——8

INTERNAL SECURITY LEGISLATION

THURSDAY, APRIL 8, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 9:30 a. m., in room 346, Old House Office Building, the Honorable Louis E. Graham (chairman of the subcommittee) presiding.

Present: The Honorable Messrs. Graham, Celler, Hyde, and Feighan; and the Honorable Ruth Thompson.

Mr. GRAHAM. The subcommittee will come to order.

May I make a preliminary statement. When we adjourned yesterday we had no knowledge that the House would adjourn to resume at 11 o'clock today.

We will call Judge Musmanno now. May I suggest that you finish your statement, Judge Musmanno, and then go into the merits of the bills.

Judge MUSMANNO. Yes, sir, I will do that.

Mr. Chairman, when Simon W. Gerson of the Communist Party spoke yesterday, I misunderstood him to say that 15,000 American Communists had died in World War II. Upon reading his statement last night I discovered that what he actually said was that 15,000 American Communists had served in the Armed Forces of the United States in World War II. At the time he was speaking, it occurred to me that he was exaggerating the number of Communists who had died, but I did not challenge his figures because I had no immediate access to statistics. I don't know how many of the 15,000 Communists were killed in war, nor do I know where Mr. Gerson got his figures that 15,000 Communists were in American uniform except to say that the Communist Party must hold a lengthening chain of control over every Communist, no matter where he goes. I do know this, however. During my 6 years' military service in World War II I ran across several American Communists, and to me they were a disgrace to the uniform.

The program of the Communist International, as testified to in the Dennis trial in New York, points out that Communists are not to refuse military service, because they must learn how to use guns in order to fight against the bourgeoisie of their country. The function of a Communist in the Army is thus stated to be:

> In its struggle against the imperialist system the proletariat strives to enlighten the proletarian and semiproletarian elements of the bourgeois army, and to draw it over to its side; to divert the soldiers' rifles from against the working class and to turn them against the ruling class. Work in the army

plays a particularly important role, since only by the "creation of a secret organization of revolutionists in the army" (Lenin) that is, in the first place of Communist nuclei, together with the mass action of the working class, can imperialist war be combatted and the premises be created for the victory of the proletarian revolution (United States Court of Appeals, Second Circuit, *United States* v. *Eugene Dennis et al;* brief for the United States, p. 65).

The imperative need for the passage of the Dies bill is demonstrated rather cogently in this very matter. John J. McCloy, at the time Assistant Secretary of War, testified before the House Un-American Activities Committee on an Army directive issued December 30, 1944, which read as follows:

No action will be taken * * * that is predicated on membership in or adherence to the doctrines of the Communist Party unless there is a specific finding that the individual involved has a loyalty to the Communist Party as an organization which overrides his loyalty to the United States (Congressional Record, March 22, 1954).

Mr. Chairman, can you imagine a more distressing paradox than this: that an Army directive should seriously even consider that a Communist's loyalty could possibly not override his loyalty to the United States? It is because of this appalling misconception, due to colossal ignorance, indifference or otherwise, that the world is in such a sorry state with regard to the most frightful menace that has ever confronted civilization. For years Communists, fellow-travelers, misguided liberals and "professional" intellectual academicians have been saying that communism is simply a philosophy, that the Communist Party in the United States is a political party, and that the Communists in China were simply "agrarian reformers." As a consequence the air over one-fourth of the earth's surface is now contaminated by the Red flag of aggression, tyranny, and inhumanity. The mistake has indeed been made, but there is no reason to perpetuate it. To go on calling the Communist Party in the United States a political party is an affront to the American people, a dishonor to every American family that has lost a son to Communist bullets, and an ever-increasing peril to the security of our Nation.

Mr. FEIGHAN. Do you not think that is a colossal example of complete naivete and stupidity?

Judge MUSMANNO. It is without question. Louis Budenz, who as you know, was a member of the Communist conspiracy for many years, appeared as a witness in the case of *National Maritime Union of America* v. *Herzog* (78 Fed. Supp. 146, 175). His evidence is illuminating on the proposition as to whether the loyalty of a Communist to Russia overrides his loyalty to the United States, this is a question put to him at that trial.

Q. Mr. Budenz, if a member of the Communist Party in this country receives an order from Moscow with regard to a certain situation, and the Government of this country, let us say the President of the United States, made an order pertaining to the same subject but the order was exactly the opposite of the Moscow order, can you state, from your knowledge of the Communist Party, what the object of the member, the Communist Party member in this country, would be as to which order he should or would have to follow?

A. I can state from my knowledge and from my experience he would have no opportunity but to follow the order from Moscow.

Mr. Gerson yesterday spoke generally on all the bills which have been urged against the Communist Party. I am speaking here on the Dies bill. I recognize that some of the bills introduced could not pass

the test of constitutionality, not especially because of what Mr. Gerson said, but for inherent defects observable at a glance by constitutional lawyers. However, to the extent that Mr. Gerson's remarks are directed against a bill which, outlawing the Communist Party, meets all constitutional tests—and I sincerely believe that the Dies bill does meet such tests—I must say that his argument is the typical communist, pro-Russian, anti-American argument that one reads in the Daily Worker every day.

Mr. Gerson says that from the standpoint of loyalty, the United States is his country. I hope it is. Why then was it necessary for him to devote so much of his argument apologizing for Russia, asserting that Russia has no aggressive intentions against the United States, that Russia is eager for peace, that Russia wants to end the cold war, and so forth? What do these arguments have to do with whether a bill outlawing the Communist Party offends against the Constitution of the United States?

Why was it necessary, in order to demonstrate opposition to a bill outlawing the Communist Party, to argue that the United States must give up airbases and military installations around the world? Would that benefit Simon W. Gerson as secretary of a political party in New York, if the Communist Party were in truth an American political party dedicated to the ideals of democracy?

Mr. Gerson presented here a document entitled, "The American Way." Every page belies its title. It says that the Communist Party is based on the scientific principles of Marxism-Leninism. What are these scientific principles? I quote again from Louis Budenz, testifying in the case of United States versus Dennis, et al.:

> . . . the Communist Party bases itself upon so-called scientific socialism, the theory and practice of so-called scientific socialism as appears in the writings of Marx, Engels, Lenin and Stalin, therefore as interpreted by Lenin and Stalin who have specifically interpreted scientific socialism to mean that socialism can only be attained by the violent shattering of the capitalist state, and the setting up of a dictatorship of the proletariat by force and violence in place of that state (United States Court of Appeals, 2d Circuit, supra, p. 23).

Is that the American way?

Mr. Gerson says that—

> socialism, and of course when a Communist speaks of socialism he means communism, will come into existence only when the majority of the American people decide to establish it.

How do the Communists define "majority"? Joseph Stalin, quoting Lenin, explained quite graphically what is meant by Communist "majority":

> In order to win the majority of the population to its side, the proletariat must first of all overthrow the bourgeoisie and seize state power and, secondly, it must introduce Soviet rule, smash to pieces the old state apparatus, and thus at one blow undermine the rule, authority and influence of the bourgeoisie and of the petty bourgeois compromisers in the ranks of the nonproletarian toiling masses.

That is the majority referred to in this miserable sheet that has the temerity and brazenry to carry the title: The American Way.

In usual Communist propagandistic fashion, this contaminated rag advocates certain reforms. It calls for jobs, peace, democracy, homes, schools, and other so-called reforms. Listen to the master Com-

munist speaking again. Joseph Stalin in his book, Foundations of Leninism, says:

The revolutionary will accept a reform in order to use it as an aid in combining legal work with illegal work, to intensify, under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie.

Mr. FEIGHAN. At that point, Judge Musmanno, I think it is quite proper to inject this factual situation, that the Communists have used legal instruments, for instance, the nonaggression pacts always to accomplish their illegal objective and when they used this legal instrument, or this legal instrument illegally to accomplish their diabolical objectives such as taking over those countries which they have taken over in the last 9 years then they are doing as you say, combining legal work with illegal work.

Judge MUSMANNO. It is absolutely correct, Congressman Feighan.

All these spurious claims for jobs, peace and so on make up the usual mask behind which the diabolically grinning face of bloody revolution lurks.

Mr. Gerson handled the truth rather parsimoniously, not to say pusillanimously, yesterday. Not only did he malign the sacred memory of Abraham Lincoln, but he misused the words of one of our greatest Americans of today, the superb and brilliant jurist, Supreme Court Justice Jackson. Gerson did not give you the citation from which he cited when he attributed to Justice Jackson the statement that "the rights of all Americans are tied up in one bundle with the rights of the Communists." I went over to the library yesterday and found that case. It was the Williamson case—*Williamson* v. *United States*, 184 Fed. 2d, 280, and it had to do with the rights of Communists to bail. Justice Jackson very properly said that under convictions for violating the Smith Act, the defendants there involved were entitled to bail, as everyone in America is entitled to bail in accordance with the Constitution and the law of the land. But Mr. Gerson did not read to you the sentence which immediately preceded the quoted remark. Justice Jackson there said:

The plea of admitted Communist leaders for liberties and rights here, which they deny to all persons wherever they have seized power, is so hypocritical, that it can fairly be judged only with effort.

It was inevitable that Mr. Gerson would refer to Hitler's aggressions on the Communists in Germany, very gingerly, however, as all Communists do, avoiding any reference to the satanical alliance between Hitler and the Communist Stalin, the unholy alliance which eventually brought death to 20 million human beings. When Hitler attempted to outlaw the Communist Party in Germany, it was simply the case of one burglar shooting his companion burglar in order to avoid splitting the booty with him. And then, as a matter of fact, Hitler would never have attained power in the first place had it not been for Communist cooperation with the Nazis, all of which is revealed in the authoritative work on Hitler, Der Fuehrer by Konrad Heiden.

Mr. Gerson attacked fascism yesterday, but what does he mean by fascism? Leaving aside the conspiracy between communism and fascism to destroy the peace of the world in 1939, the Communists characterize everything truly American and antisubversive as fascist. Among the institutions they list as Fascist are the American Legion,

the Veterans of Foreign Wars, various committees of Congress, the American press, and so on and on.

Mr. Gerson quoted from the book, Twilight of World Capitalism, by William Z. Foster, but he failed to give you the dedication in that book which reads:

> To my great grandson, Joseph Manley Kolko, who will live in a Communist United States.

And, of course, you will recall that Foster said that the "Communist United States, would be brought about through the instrumentality of the Red Army. Foster looks upon the Soviet Union as his fatherland and the Red flag as his flag. In the "Communist United States" that he anticipates during the lifetime of Joseph Manley Kolko, he says that:

> The Soviet court system will be simple, speedy and direct. The judges, chosen by the corresponding Soviets, will be responsible to them. The Supreme Court, instead of being dictatorial and virtually legislative, as in the United States, will be purely juridical and entirely under the control of the Central Executive Committee. * * * The pest of lawyers will be abolished. The courts will be class-courts, definitely warring against the class enemies.

Although Gerson argues for perpetual existence of the Communist Party in the United States on the theory that it is a political party, Foster very emphatically announces that in his "Communist United States" the Republican and Democratic Parties will be "liquidated." He says further that the Soviet Government will "dissolve" such elements of our society as chambers of commerce, employers' associations, Rotary clubs, the Y. M. C. A., the Masons, Elks, Odd Fellows, Knights of Columbus, and so forth.

Mr. Gerson has said that Communists do not advocate violence in the achievement of their objective. As a matter of fact, they advocate nothing else. I quote again from Joseph Stalin in the book Problems of Leninism:

> Can such a radical transformation of the old bourgeoisie system be achieved without a violent revolution, without the dictatorship of the proletariat? Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution.

Mr. Gerson quoted from a statement made by J. Edgar Hoover in January 1953, with regard to the objectives of the Communist Party. Mr. Gerson is rather proud of those objectives which include the recall of American troops from abroad; a five-power pact, recognizing Communist China; the repeal of the Smith Act and the nullification of the Internal Security Act. A criminal demand for the crippling of a nation so that it may fall helplessly before the onslaught of a lawless power is no less reprehensible because of its barefacedness. Certainly Gerson would like to see all anti-Communist legislation repealed and China with its bloody hands brought into the United Nations, but the American Congress will not be impressed with such absurdities.

Mr. Gerson is no more impressive with his argument that because the Communist Party is small in numbers that it must be comparatively small in danger. Modern society has become so co-involved and its various phases are so vitally interdependent that small groups

located in strategic and sensitive plants can with bombs and other highly wide-spreading destructive weapons, paralyze the whole machinery of our economic and social life. It takes hundreds of men to build a bridge, but one man can destroy it. A thousand men may run a ship, but one auger can scuttle it. Scores of diplomats make up a conference but one Alger Hiss can betray a nation.

To devote any more time to Mr. Gerson's puerile observations would be to assume that they have intellectual ballast and some semblance of logical appeal. If he were capable of appreciating the vast patience of the American people, the boundless tolerance and open-mindedness of American representatives in listening to any reasonable appeal, and what it has cost America in blood and treasure to rear a democracy devoted to the standards of the true dignity of man, he might have experienced some embarrassment in presenting propositions so utterly revolting to every tradition of American ideals.

Whether he does or does not have that appreciation I will not judge.

America entered the Korean conflict in the honoring of her commitment to oppose aggressive war. The Charter of the United Nations, of which Russia is an original subscribing member, provides that international controversies shall henceforth be adjudicated by law and not by cannon; by reason and not by gunpowder. In violation of her own solemn obligation, Communist Russia armed North Korea and sent those forces blasting across the 38th parallel. The United States, with 25,000 sacred dead, and 15 other nations with their own grievous losses, stopped Russia in the illegal aggression. As already suggested the Communists in the United States lent every aid and comfort to the enemy. What American statesman, after seeing one of the 25,000 flag-draped caskets returning to the United States, can in conscience do other than lend his legislative, executive, and administrative effort toward outlawing the coslayers of the boy in that casket and the prospective slayers of other American boys?

In streetcars and buses of American cities throughout the land there has appeared recently a pictorial placard showing a sobbing and bewildered little girl searching through the fragmented rubble and debris of a city brought to dust by an atomic blast. It is evident from the picture that no other life remains in the desert of ruin which surrounds her and it will only be a question of hours until this lone, heart-shattered survivor will join the caravan of the millions dead. The purpose of this doleful picture is to urge persons to join the Ground Observers Corps to watch the sky for invading planes. But it might be better first to drive from the skyscrapers the spies prepared to signal their confederates in the clouds.

The Communists of today are not only underground but they are in tall buildings, on hilltops and in improvised towers waiting to flash signals to the black eagles from Moscow carrying in their talons the manmade earthquake for ultimate terror and ruin.

Malenkov and Molotov would not chance sending planes to America without accomplices here to give signals, fuel, and mechanical assistance to the invaders. The Kremlin needs a fifth column to every advancing infantry division. We have it in our power to demolish that fifth engine and to rout the fifth column.

The destruction of the engine of conspiracy and the jailing of the conspirators in the United States will enhearten and encourage every

liberty-loving nation on the globe. The United States has spent and continues to spend many millions of dollars for Voice of America programs to convince the world of the evils and dangers of communism. The jailing of all Communists would do more good than all the Voice of America programs put together.

Vladimir Lenin, the first Communist dictator, urged his emissaries to "go among all classes of people as theoreticians, as propagandists, as agitators and as organizers." He exhorted them to the realization that their ask was "to utilize every manifestation of discontent, and to collect every grain of even rudimentary protest." If he could think today with his formaldehyde-soaken brain as he rests in his sumptuous mausoleum on Red Square, he would need to exult at the bountiful harvest seemingly resulting from the unholy seeds he sowed 40 years ago. Our national life is torn asunder because of discontent, unrest, confusion, and dismay.

American is pitted against American; groups are fighting each other not on the high plateau of policy but in the narrow defiles of misunderstanding, mistrust, and misconception of purpose. In a nation morally united against thet Red scourge threatening our very existence, the people do not know which way to turn, whom to believe, whom to follow, in whom to have confidence. There is or should be only one issue on this subject: How best to defeat the common foe. But there are a hundred different ideas, a thousand different plans, there are quarrels, skirmishes, and clashes in the allays, byways, and bushes of minor contention, while the direct, head-on, frontal attack which will surely destroy the foe is ignored.

There are literally myriads of proposals on how to fight communism, some of them already enacted into law. Some of the proposals require that Communists be registered; others, variously, that they be kept out of certain industries, that they be restricted to certain areas, that they be denied the use of the mails, that they be refused prining privileges, that they file affidavits, that they be denied rights of contract, that they take repeated loyalty oaths, that they not be allowed to vote, or hold office. If a hydra-headed, fire-breathing monster were moving on a village intent on destroying it and devouring its inhabitants, we would regard as rather puerile proposals by the town council that the way to avert the threatened disaster would be to tie the front legs of the beast or to bind his hind legs or to shoot him in the left front foot, or to twist his tail into a knot, or to trim his ears. It is obvious that there would be only one way to dispose of the homicidal behemoth and that would be to destroy him. How long will we tolerate the monster of communism which worries us by day and distresses us by night, which is eating out our substance, which attacks the highways of security, imperils the bridges of defense, and is showing the very foundations of our society?

It is because of communism that American boys are being taken from the schoolrooms and sports field to be trained for mortal combat on distant battlefields. It is because of communism that America is being drained of her rich, natural resources to arm the world against the attack which threatens to destroy civilization itself. It is because of communism that fear casts a shadow on the American heart that has always known the light. It is because of communism that we stagger under a tax burden never known in the chronicles of the

revenue collector. And yet we go on awarding respectability and confidence to the scheming scavenger traitors planning to reduce the United States to a quaking Poland, a police-state Czechoslovakia, a fear-drenched Hungary, or an OGPU-ridden Albania, residence in any of which freedom-drained lands would to an American be living death.

Americans think clearly and logically. Why is there a fog in the rationalization of this subject? It is appallingly inconsistent, if not absurd, to spend irrecoverable blood and incomputable treasure in Europe and Asia to keep Communists presumably away from our borders and yet allow them on Main Street itself.

We contest them for a trench in the Eastern Hemisphere and then here assure them sanctuary, offices, telephones, telegraph service, couriers, and impedimenta of war.

We spend billions of dollars to teach other countries how to beware of Communists and yet here permit them in the courthouses, the professions, the schools, the business marts, and on the stage and concert platform.

It is all so grotesque that I apprehend someday that the souls of our immortal patriots and martyred heroes in Statuary Hall will break out from their imprisoning bronze and marble and cry out: "Enough!"

The outlawing of the Communist Party in the United States would destroy the fifth column here. Other countries, taking heart, would do likewise. Once the Communist Party in all non-Soviet countries is eliminated, the threat of a third world war will disappear.

A due regard for honesty in the affairs of men, which has never been lacking in the purpose of the American Commonwealth, dictates that we do this. The Communist Party has no place in this land of God, of law, of decency and respect for one's fellow man.

I respectfully recommend to this committee that in the name of all that we hold dear in this greatest of all lands that Congress enact into law House bill No. 7894, outlawing once and for all time that ungodly, un-American, traitorous, criminal organization, no matter what its name, but which today insults, derides, and degrades the deathless and glorious name of the United States by calling itself the Communist Party of the United States.

Mr. GRAHAM. Thank you, Judge Musmanno.

Mr. HYDE. Judge, while recognizing the necessity for outlawing the Communist Party because it is not a political party, but simply an international conspiracy to enslave the soul and mind of man, nevertheless, don't you think it might be salutary in its effect if an address such as yours were inserted in the record to give an admonition to our political, business and social leaders that communism will not be defeated merely by a statute? You cannot imprison an idea and we should have some place in this record an admonition to our business, political, and social leaders that, in the last analysis, we are only going to defeat this idea by making freedom work.

The admonition should go further by advocating that our daily business and fundamental affairs and our ideals should be brought within the ideals of the Declaration of Independence and of our Constitution and our religious belief. And while recognizing the necessity for solvency we should not exploit our fellow man for

profit or power. Unless that is done, we still might be divided and defeated by the idea of communism.

Don't you agree such an admonition should be in the record?

Judge MUSMANNO. I think most emphatically, Congressman Hyde, you are right and I think that is a splendid expression itself that will give the impression you refer to.

Mr. GRAHAM. Are there any further questions before we proceed with discussion of the bills?

Mr. FEIGHAN. You have made it factually clear what is the ultimate goal of the international Communist conspiracy of which the Communist Party in this country is only a small part. It is unrelenting in its objective which is the enslavement of all mankind.

I myself feel that you deserve the undying gratitude, not only of the people of this country, but of all the people who are interested in human freedom—of liberty throughout the world for the time, effort, and sacrifice you have given to this all-engrossing problem, and I wish to congratulate you.

Judge MUSMANNO. Thank you, Mr. Congressman. I appreciate that very much.

Miss THOMPSON. I think your presentation has been very fine and I wonder if you might not consider putting it into pamphlet form and putting them on the market? I would be interested in receiving and using four or five hundred copies.

Judge MUSMANNO. Miss Thompson, I appreciate it very much.

Mr. GRAHAM. I have know Judge Musmanno for many years. He was in the United States courts in Pittsburgh and in the course of the years he has prepared a more thorough compilation of information on this subject—and one of the most effective things, that I have ever seen. He very kindly gave it to me and I have always kept it in my library.

In the long years I have known you and in recent years, both in service abroad and in service in the courts of the United States, you have done a wonderful thing for your forebearers and for America. You came to this country from Italy and it is my impression that you are doing a magnificent thing at this moment and we deeply do appreciate it.

Judge MUSMANNO. Thank you very much, Mr. Chairman. I feel these expressions deeply because, as you have indicated, I am the son of an Italian immigrant and I appreciate more than words can express the great opportunity this country has provided for me as the son of a coal miner, a railroad worker, who has had the opportunity to achieve the highest judicial office in our own great Commonwealth of Pennsylvania.

Mr. CELLER. May I ask one question? My question does not imply any opinion of my own but simply these are questions to get information from you and to get your opinion.

I have traveled considerably. I have been in Italy, France, and have spoken to many persons in those countries and that gives rise to this question.

Mussolini, by sundry and diverse kinds of legislation and repressive measures, Hitler in Germany, and France—these countries have dealt with this problem with such a degree of force and have covered the ground with oppressive legislation. Yet, we find that despite these

edicts, administratively and legislatively, that communism has made great strides in Italy and France and considerable strides in Germany.

How do you account for that?

Judge MUSMANNO. Congressman Celler, I addressed myself to that subject previously.

Mr. CELLER. I am sorry. I was not there. If it is in the record I will withdraw the question and I will read the record.

Judge MUSMANNO. And this morning I referred to something which Mr. Gerson, representing the Communist Party, referred to.

He commented on the fact that Hitler endeavored to outlaw the Communist Party. I said this morning, when Hitler was dealing with the Communist Party, it was the situation of one burglar shooting a companion burglar so that he would not have to split the loot. Hitler would never have achieved power had it not been for the Communists in the earlier stages of his rise to power.

Mr. CELLER. I have just come back from India. India in many of its provinces and states is finding that communism has made great strides.

Judge MUSMANNO. I would not compare the status of India with that of the United States, in the enforcing of law.

Mr. CELLER. Do not imply with your voice that I am opposed. I am simply pointing out to you that with their standards of living——

Judge MUSMANNO. I did not mean standards of living. I meant standards of enforcement of law.

Mr. CELLER. Oh, there is great enforcement of it in India and you will find the newspapers full of condemnation against Communists. They have statutes to keep out Communists just as we have.

Judge MUSMANNO. We do not have them. You said, "as we have." That is the trouble, we do not have the statutes.

Mr. CELLER. I mean statutes that contain various provisions that keep communism from taking over; that keep people from becoming Communists and from bringing in Communists from outside the country. They have provisions in their statutes exactly like ours. And yet they do not seem to be able to stem the tide of communism.

Judge MUSMANNO. May I ask, Congressman, if there is a Communist Party in India?

Mr. CELLER. Sure there is.

Judge MUSMANNO. Then it has been outlawed.

Mr. CELLER. I said in a number of the provinces.

Judge MUSMANNO. This is such an octopus that the chopping off of a minor tentacle in the outlying provinces is not enough. You must kill the beast in the center, and that is the reason I think Congress must outlaw it federally. I had something to do with the outlawing of the party in Pennsylvania. I wrote the bill which finally became the law in Pennsylvania but naturally that cannot keep Communists out of Pennsylvania because there is not a Federal law to help Pennsylvania in preventing an invasion of our borders.

Mr. GRAHAM. Will you pardon, Mr. Celler. I am familiar with the recent situation in Pennsylvania. I am perfectly familiar with it. The Supreme Court of Pennsylvania recently rendered an opinion which practically wiped out the anti-Communists law of Pennsylvania. That was under the Smith Act. Judge Musmanno wrote strongly dissenting opinions. He has been in touch with Judge Smith

who has now introduced a new bill to give greater efficacy to the original Smith Act and to reinforce the State law.

Judge MUSMANNO. That is correct.

Mr. GRAHAM. Off the record.

(Discussion off the record.)

Mr. GRAHAM. On the record.

Mr. HYDE. If I may presume for a moment to assume some of the answer to the question of the gentleman from New York that, don't you think part of the answer to that question is due to the failure of business and professional and social leaders in those countries to which Mr. Celler referred to. Those are the very things which I suggested a moment ago as necessary to make their system work, to make freedom work. Certainly, that is true of India where the people are still suffering under the old feudal type of oppression and slavery. They have been under it for centuries and certainly it is a carryover of the old feudal exploitation in India.

One of the things that bothers me—I would like now to ask a very direct question. It is this.

We are declaring, of course, that membership in the Communist Party is, ipso facto, a crime, if we pass a law like this.

I have been told of many people in other countries who are perhaps members of the Communist Party who do not know about Marxism, Lenninism, and Stalinism, but because it is the only effective party or group to oppose the group that does have control of the government, because they do not agree with that group and want to toss them over, they have turned to the only effective opposition.

We might have people coming over here from Italy, or trying to come over here, who are in the Communist Party in Italy but who have no sympathy with the fundamental doctrine of Stalin and Lenin and Marx.

That is one thing that bothers me about this problem.

Anybody who remains in the Communist Party in this country, unless they are just stupid dopes, are just used for errand boys. They do not know what it is about. But can we make the broad assumption about everybody in every country in the world who happens to be in the Communist Party that they are in the same class.

Judge MUSMANNO. You referred to the situation in Italy. I might say that it is my earnest conclusion that one of the gravest blunders made by the Allied Powers in the setting up of the legislatures of Europe was to allow Russian representatives to come into Italy and to develop the Communist Party and to make it part of the Government.

I happened, for a short period, to be Governor of Sorrento when Vyacheslav Molotov arrived to call on the representatives of the Allied Powers to form an Italian cabinet after the fall of the Government.

Outside my headquarters we were flying the American and British flags. He asked me why the Russian flag was not there. He said, "Aren't we allies? Aren't we fighting for the same thing?"

I said, "No. We are not. If we were fighting for the same thing and had the same ideals, this war would never have started." I could not translate what he said in Russian to me after that remark.

But the fact is that the Allies allowed the Russians to participate in the formation of the Italian Government and actually put Russian members in the Italian Ministry and that was the beginning, because

in the disordered state in which Italy found herself at that time, communism was allowed to take a vital hold on the whole political economy of the Nation.

It is not because the Italian people want communism.

Mr. HYDE. I can see that. However, they embraced that party because they looked upon it as the only effective party in Italy in opposition to the government which they opposed.

The thought I am directing my attention to is this question of everybody who is a Communist or who is in the Communist Party—whether that person is of a revolutionary frame of mind attempting to overthrow the government by violence.

We may have people coming over here who we tried to screen, but people who are members of the Communist Party; people who have been members of the Communist Party in Italy, not because they embraced the doctrines of Stalin and Lenin but the thought that bothers me is, what may we be doing to such people by statutes such as we suggest? I am asking the question and not suggesting anything.

Judge MUSMANNO. I think I have indicated quite clearly what my thoughts are. I hope they are clear. In outlawing the Communist Party of the United States I believe it would eliminate the fifth column. Other countries will take heart and if you eliminate the fifth column throughout the world, Russia will not attempt any aggressive plans.

It was only because of the fifth column in South Korea that the Korean war started.

Mr. FEIGHAN. If I may, I would like to ask this question. I notice in your discussion, you mentioned House bill 7894. I would like to ask you this, of all the bills that have been introduced by the various Members of Congress, I would like to have your opinion as to the bill that has been introduced which in your opinion would best accomplish the objective that we desire and which is most necessary.

Judge MUSMANNO. Categorically, and without any reservation, I would recommend H. R. 7894 for enactment in the law. I believe it is direct. It is clear. Is is unequivocal. It is precise. It has no unnecessary verbiage. It protects all the constitutional rights of those who might be subjected to its broadest sweep. It is fair, reasonable and in keeping with American traditions and what the American Congress is attempting to do and is doing on behalf of the security of the American people.

Mr. FEIGHAN. You believe it is all-encompassing without any unnecessary verbiage?

Judge MUSMANNO. Some of these bills are rather verbose. Some are exceedingly obscure. Some are capable of many meanings and could not possibly pass the constitutionality tests which have been laid down as to precision in statutory language.

Mr. GRAHAM. Judge Musmanno, you know Mr. Walter, the Member of Congress here, introduced a bill and his main argument was on this point, if you name the Communist Party that it would simply spring up in another guise and perform in some other way. Would you care to express yourself on that point?

Judge MUSMANNO. May I make this suggestion that I prepare a brief on each one of these bills and that the presentation which I have just given in answer to that question be not used and I will assemble it in more logical form. This presentation was done rather hurriedly

and I was glad to give it to you for your immediate benefit. But I think I could prepare a brief that would cover all these bills which would be more acceptable.

Mr. GRAHAM. That will be agreeable to the committee and we will not use the presentation you have just given which will not be made part of the record. The reporter's notes on House bill 7980 will not be transcribed but they will be substituted by the brief on each one of the bills which you intend to submit.

(The following brief was filed by Justice Michael A. Musmanno, on May 24, 1954:)

BRIEF SUBMITTED BY PENNSYLVANIA SUPREME COURT JUSTICE MICHAEL A. MUSMANNO TO THE HOUSE JUDICIARY COMMITTEE ON THE FOLLOWING BILLS HAVING TO DO WITH INVALIDATION OF THE COMMUNIST PARTY: H. R. 7337; H. R. 7980; H. R. 1576; H. R. 5941; H. R. 6877; H. R. 6943; H. R. 7405; H. R. 7814; H. R. 7846; H. R. 7894; H. R. 8326; H. R. 8363; H. J. Res. 346; S. 200; S. 2752; H. R. 226; H. R. 3398; H. R. 8489; H. R. 8948; H. R. 8912

The most fundamental requirement of any statute, and particularly a criminal statute, is clarity and precision. The Supreme Court of the United States in *Champlin Rfg. Co.* v. *Commission* (286 U. S. 210, 242), emphasized the well-known rule which must underlie the consideration of all bills coming before the House Committee on the Judiciary aiming at outlawing or invalidating the Communist Party of the United States. In the Champlin case, the Supreme Court said:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. * * *

"The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirement and the courts upon another."

In *Winters* v. *New York* (333 U. S. 507), the Supreme Court of the United States branded as too vague for criminal prosecution subsection 2 of section 1141 of the New York Penal Law, which read:

"SEC. 1141. OBSCENE PRINTS AND ARTICLES

1. A person * * * who

2. Prints, utters, publishes, sells, lends, gives away, distributes or shows, or has in his possession with intent to sell, lend, give away, distribute or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; * * *

Is guilty of a misdemeanor * * *"

The Supreme Court specified:

"The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness' (*Cantwell* v. *Connecticut*, 310 U. S. 296; *Pierce* v. *United States*, 314 U. S. 306, 311). There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act (*Lanzetta* v. *New Jersey*, 306 U. S. 451), or in regard to the applicable tests to ascertain guilt."

Applying these standards of statutory construction to certain bills now before the House Committee on Judiciary for consideration, I would say that H. R. 7337 could not pass the test of constitutionality for the reasons that:—

1. It violates amendment VI of the United States Constitution providing that the accused "shall be informed of the nature and cause of the accusation;"

2. It violates article I, section 9, clause 3, which prohibits ex post facto legislation;

3. It violates amendment V, prohibiting the deprivation of "life, liberty, or property, without due process of law."

H. R. 7337 defines an organization which has for one of its purposes "the control, conduct, seizure, or overthrow of the Government of the United States by the use of force or violence," as one which "has been determined by a court of the United States in a judicial proceeding to have any such purpose or aim."

What is meant by a court of the United States? There are district courts, circuit courts of appeals, and the Supreme Court of the United State. A decision of a district court or a circuit court of appeals is not final. Under this act, however, one could be prosecuted and convicted under the decisions of a district court which declared as criminal a certain organization within the provisions of the act, although later a circuit court of appeals or the Supreme Court of the United States might well reverse the decision and legalize the organization.

Even if the act referred to organizations which have been determined to be illegal by the Supreme Court of the United States (which, however, it does not), this reference still would not make for the definiteness required under the authorities. Suppose the organization which the Supreme Court has declared to be a criminal organization has changed character since the Supreme Court so pronounced it, would a member of the regenerated organization still be answerable to the penal provisions of this act? Would it be fair to subject a person to a criminal prosecution with such doubts, mutations, and possibilities of interpretation pervading the entire crmnal procedure? The answer is naturally found in the question itself.

Furthermore, if the measure of proof is determined by any one certain decision, as the bill indicates, this means that the conviction of any given defendant must be based on the same character and quantity of evidence which was introduced in the case which is accepted as the criterion. For instance, if the trial judge decides that he will be guided by the decision in the case of *United States* v. *Dennis* (341 U. S. 503) (which, up to this moment, is the latest Supreme Court decision under the Smith Act), then the trial will become an interminable one. The Dennis trial lasted some 8 months. It would mean that the United States attorney would be required to show the objectives of the Communist Party and put in considerable evidence, documentary and oral, to establish what is now known to be a fact. If that is to be the purpose of this bill, and a reasonable interpretation admits of no other, then it is entirely superfluous because it would do no more than is now possible under the Smith Act.

Section 1 of H. R. 7337 reads that "any person who becomes or remains a member of the Communist Party," shall be guilty of a felony. How long must one be a member in order to come within this provision? To remain a member means naturally to be a continuing member of the organization, but to become a member projects many doubts. Certainly no criminal code worthy of the name would punish a person who was a member of a prohibited organization for only a minute or a second. Yet, this bill would either punish such ephemeral membership or it would not, thus leaving in doubt "what conduct" those who are subject to its penalties "will render them liable."

Subsection (2), clause (a), of section (1) of this bill interdicts membership in any "society, group, or assembly of persons of the type referred to in the third paragraph of section 2385 of title 18 of the United States Code." The word "type" is a generalized term entirely out of keeping with the precision expected in the Criminal Code. "Type" is defined in Webster's Unabridged Dictionary as "the general character, form, or structure common to a number of individuals and distinguishing them as a class, group, or kind; a particular kind, class, or order; as the seedless type of oranges; criminals of the most dangerous type." There are indeed many seedless types of oranges, and opinions differ widely (even and especially among judges) as to what constitutes a criminal of a dangerous type. Who is to decide what type of organization is interdicted in this bill? In the case of *Winters* v. *New York*, *supra* (p. 516) the Supreme Court approved of the following language in the decision of the lower court:

"Where the statute uses words of no determinative meaning, or the language is so general and indefinite as to embrace not only acts commonly recognized as reprehensible, but also others which it is unreasonable to presume were intended to be made criminal, it will be declared void for uncertainty."

Clause 2B, subsection (b), of section 1 of H. R. 7337 provides penalties for membership in organizations which engage in "political activity as defined in section 2386" of title 18 of the United States Code. Defining a present crime in a present piece of legislation by referring to a definition in a totally different and unrelated piece of legislation is an unsatisfactory way in which to establish the precision required in a criminal statute bearing the penalties contemplated in this proposed statute.

Section 3 of the proposed law violates article I, section 9, clause 3, of the United States Constitution which prohibits ex post facto legislation. The offending section 3 reads:

"The provision of this Act shall apply only with respect to offenses committed wholly or partly after the date of the enactment of this Act."

An offense is not an offense until completed. A crime cannot be completed until all the integral factors which go into its construction are accomplished. Thus, if part of the crime is committed prior to the passage of this bill and part subsequent to its enactment, the part which precedes the enactment is obviously ex post facto.

Chief Justice Marshall defined an ex post facto law as one "which renders an act punishable in a manner in which it was not punishable when it was committed" (6 Cranch 137). Let us suppose that the crime intended by H. R. 7337 requires three different steps before it becomes a fait accompli. If two of these steps were performed prior to the enactment of the law and one subsequent to the enactment, parts Nos. 1 and 2 cannot be engrafted to No. 2 because they stand in the realm of ex post factoism. Step No. 3 could not be punishable in itself because it would be an incomplete crime.

It is my opinion that H. R. 7337 could not possibly pass the test of constitutionality in any Federal court.

H. R. 7980

The sponsor of this bill, the Honorable Francis E. Walter, has perhaps the longest continuous record in Congress for fighting communism and all its evil works. His valiant contribution in this battle against the scourge of the international Communist conspiracy deserves the commendation of the entire Nation. For many years, Representative Walter has been urging the outlawing of the Communist Party, and it is with intense personal regret that I feel compelled to say that, in my humble judgment, the bill which he has introduced does not achieve the objectives to which he has devoted himself so courageously, zealously, and energetically for some 20 years.

With every deference to Representative Walter, whom I admire and whose friendship I cherish, I state that in my opinion H. R. 7980 could not pass the test of constitutionality because it does not establish with the particularity required by the decisions of the Federal courts the exact nature of the crime which is to be punished.

"Every criminal statute creating a new offense must be so explicit in its terms as to inform those who are subject to penalties under it what conduct on their part will render them liable. A statute so vague in its terms that men of ordinary intelligence must guess at its meaning and differ as to its application violates every essential element of justice and fair play, and if the statute here involved is of such indefiniteness, it is void." (*United States* v. *Miller*, 17 F. Supp. 65, 67.)

In *Musser* v. *Utah* (333 U. S. 95, 97), the Supreme Court of the United States declared:

"Statutes defining crimes may fail of their purpose if they do not provide some reasonable standards of guilt. Legislation may run afoul of the Due Process clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused."

H. R. 7980 would punish anyone who "organizes, or assists or attempts to organize, or, knowing the purposes thereof, becomes or is a member of, or affiliates with any society, group, party organization, or assembly of persons which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism." While "whoever organizes," would be sufficiently clear as to

identity of the offender, a grave question arises as to who would be guilty of an offense under the designation of whoever "assists." How much would he have to assist? Would his mere presence at a meeting in which organization is discussed be enough to make him guilty of assisting? Since even silence in a given situation might suggest approval, would the taciturn presence of the accused at a chance conversation make him guilty of assisting? In *Winters* v. *New York* (333 U. S. 507), the Supreme Court said:

"The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness.'" "There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment."

In that same case the Supreme Court of the United States affirmed a decision of the Supreme Court of New Mexico, where it said:

"Where the statute uses words of no determinative meaning, or the language is so general and indefinite as to embrace not only acts commonly recognized as reprehensible, but also those which it is unreasonable to presume were intended to be made criminal, it will be declared void for uncertainty."

In *State* v. *Aronson* (127 N. J. L. 395, 22A. 2d 877) a statute read:

"Any person who shall, in the presence of two or more persons, in any language, make or utter any speech, statement, or declaration, which in any way incites, counsels, promotes or advocates hatred, abuse, violence, or hostility against any group or groups of persons residing or being in this state by reason of race, color, religion or manner of worship, shall be guilty of a misdemeanor."

The Supreme Court of the United States approved of the action of the New Jersey court which declared the law invalid:

"Nothing in our criminal law can be invoked to justify so wide a discretion. The Criminal Code must be definite and informative so that there may be no doubt in the mind of the citizenry that the interdicted act or conduct is illicit."

Since "totalitarian dictatorship or totalitarianism" is capable of myriads of meaning, H. R. 7980 seeks to define the phrase by saying:

"(A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between the party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit; and

"(B) the forcible suppression of opposition to such party."

Which country is to be used as a standard for the definition of the "identity between the party and its policies and the governmental policies of the country in which it exists"? How is one in the United States to be guided in his conduct when he does not know if the prosecuting authorities will accept Russia, Siam, Argentina, Indochina, or Guatemala as the standard of that blending of policies? If one with so-called liberal tendencies went to his attorney to be advised as to how he should conduct himself so as not to come within the penal provisions of H. R. 7980, what could the attorney tell him? Where would the attorney turn for guidance as to what "constitutes an indistinguishable unit" between party and Government? How would the United States attorney prepare his evidence in presenting his case against the accused? If he brought in experts to show that such a blending exists in Russia, could not the defendant produce Russian experts to deny such a merger? And how can a standard in another country become a standard of proof in our courts?

The definition in H. R. 7980 of totalitarian dictatorship is taken bodily from section 3, subsection (15), of the Subversive Activities Control Act. There is, however, this vast difference. In the Subversive Activities Control Act the definition is descriptive, but not penal. In H. R. 7980 it is penal and therefore subject to the rigorous rules on statutory construction and interpretation. And it is my opinion that, in delineating the elements of a criminal act, subject to indictment and court trial, this definition indicates a standard of proof that is vague, vacillating and indefinite, one that could not pass the tests for constitutionality on the basis of precision, as specified in the decisions from which I have quoted.

H. R. 7980 makes a single political party an integral part of the crime there sought to be defined. What is the criterion of a single political party? Here again United States authorities would be compelled to look to Europe for

of proof because we have no such standard of proof in America.
ited States attorney import expert witnesses from Czechoslovakia or
Poland to demonstrate what is meant by a single political party? In
, no conviction on that kind of proof would be sustained by our
rts.

Chief Justice Earl Warren was elected Governor of California on both the Republican and Democratic Party tickets. Did this merge the parties into one for the period of his incumbency? Might some prosecuting authority attempt to use legislation of this kind, if it were enacted into law, to harass legitimate American political organizations?

What is a party "organized on a dictatorial basis"? Huey Long was not without justification often called a dictator. But certainly those belonging to the Democratic Party in Louisiana who supported Huey Long and sought to make the Democratic Party the single party of the State could scarcely be regarded criminals punishable with the penalty of 10 years as required by this legislation? What is meant by "forcible suppression of opposition to such a party"? Does this mean suppression with violence? The bill does not so declare. Force can be applied in various ways without violence and even with some color of legal authority.

In the case of *Feinglass* v. *Reincoke* (4746, 48 Fed. Sup. 438, D. C. N. D. Ill.) an injunction was sought against election officials in Chicago to compel printing of Communist Party candidates on the election ballot. The election officials cited in defense a statute which read:

"No political organization or group shall be qualified as a political party hereunder, or given a place on a ballot, which organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi, or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the established constitutional form of government of the United States and the State of Illinois."

The court held that had the petition for relief been filed in time, the mandatory injunction would issue. In support of this statement the court said:

"Such terms as 'un-American' and the 'political principles of foreign nations' lack the precision required in a statute which affects the rights of a political group to appeal to the electorate. Any political idea that happens to conflict with the economic or political notions of an individual is apt by him to be deemed un-American. The 'political principles and ideals of foreign nations' run all the way from various forms of democratic government such as ours to those of more or less limited monarchy and to dictatorship. In some of the democratic nations, instead of an executive elected by the people, that officer is selected by the legislative body. I cannot imagine that a statute denying a place on the ballot to a party which felt that the latter method was the better would be held to be constitutional, but the Illinois statute is broad enough to bar such a party."

If H. R. 7980 could overcome the barriers of vagueness and uncertainty, it still could not possibly be constitutional because to the extent that it could be enforceable it seeks to deny the right to peaceably advocate changes in government. This is in direct contradition to our ideals of democracy. Nothing is more certain in our form of government, nothing is more definite in the Constitution of the United States, nothing could be more conclusively established in the history of our Republic than the fact that the people have the right to advocate any change or alteration in government provided the advocacy is limited to appeal to reason and to the arbitrament of the ballot box. There is nothing in the Constitution, nor in all the decisions of our courts which denies to Communists or anybody else the right to make speeches peaceably advocating a single political party, even organized on a dictatorial basis. It is because the Communists do not limit their appeal to the ballot box—in fact, ignore the ballot box—and advocate a totalitarian government on a dictatorial basis by force and violence, that they attack our institutions of freedom.

Justice Jackson, speaking in the Douds case (339 U. S. 429), specifically stated that if Communists or others interested in the Communist ideology "can persuade enough citizens, they may not only name new officials and inaugurate new policies, but, by amendment of the Constitution, they can abolish the Bill of Rights and set up an absolute government by legal methods. They are given liberties of speech, press, and assembly, to enable them to present to the people their proposals and propaganda for peaceful and lawful changes, however extreme."

H. R. 7980 would deny rights which the Supreme Court has asserted that Communists and all citizens possess. What makes the Communist program utterly wrong, of course, is not the extreme changes they recommend but the manner in which they would want to bring about those changes. Thus, Justice Jackson said:

"Instead of resting their case upon persuasion and any appeal inherent in their ideas and principles, the Communist Party adopts the techniques of a secret cabal—false names, forged passports, code messages, clandestine meetings. To these it adds occasional terroristic and threatening methods, such as picketing courts and juries, political strikes and sabotage. This cabalism and terrorism is understandable in the light of what they want to accomplish and what they have to overcome."

H. R. 7980 makes no distinction between advocacy of change of government by peaceful methods and advocacy of a change by violent methods. This, as already indicated, is a fatal defect. The United States Supreme Court considered this very subject in the case of *Winters* v. *New York*, *supra*, where a New Mexico statute came before the Court for consideration. The United States Supreme Court affirmed the invalidation by the State Court of such a statute as follows:

"The court said (p. 479): 'Under its terms no distinction is made between the man who advocates a change in the form of our government by constitutional means, or advocates the abandonment of organized government by peaceful methods, and the man who advocates the overthrow of our government by armed revolution, or other form of violence.' Later in the opinion the statute was held void for uncertainty (p. 485):

"'Where the statue uses words of no determinative meaning, or the language is so general and indefinite as to embrace not only acts commonly recognized as reprehensible, but also others which it is unreasonable to presume were intended to be made criminal, it will be declared void for uncertainty.'"

I unhesitatingly assert that in my honest opinion H. R. 7980 would be unable to pass the test of constitutionality for the reasons given.

The other bills before the House Committee on the Judiciary do not require a detailed analysis, practically all of them, with the exception of H. R. 8912, being burdened with the fatal defect of ambiguity. Since the outlawing of the Communist Party would be a momentous decision by Congress, the law proclaiming that fact should be in the clearest possible language, leaving nothing to doubt or speculation. Considering the nature and gravity of the objectives intended by the legislation, the proposed law should be complete in itself, not having to depend, by reference to other statutes for authority or direction. Not all lawyers, especially in the rural areas, and much less all lay citizens, have immediate access to the Federal Penal Code.

H. R. 6877

This bill, for instance, as was true also of H. R. 7337, depends for its vitality on other laws, already passed, and the reference is made to those other laws only by section numbers and title numbers. There is an elemental standard of fairness in American justice which balks at a statutory crime which fails to tell the people of the land exactly what it is that is prohibited and which is punishable by a heavy penalty (10 years' imprisonment here,) in *Screws* v *U. S.* (325 U. S. 91, 101) the Supreme Court of the United States declared: "The constitutional vice in such a statute [one that contains words of doubt or many meanings] is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning."

Nothing can be more important to the liberties guaranteed by the Constitution than that the people should be given adequate warning as to what it is they are not to do. The committee is familiar with the device of the Roman tyrant Caligula who had the criminal code inscribed on pillars so high that the people could not read the text. There is but little difference between inaccessibility to text and obscurity in the text which allows prosecuting authorities to read into it and out of it whatever they might desire.

H. R. 6877 says that "for the purposes of prosecution for violation of the first section, an organization *shall be presumed* [emphasis supplied] to have for one of its purposes or aims," etc. The phrase "shall be presumed" is a very tenuous phrase on which to hang a criminal prosecution. This bill, like H. R. 7377, also uses the word "type" in describing interdicted organizations. As heretofore stated, such a word is entirely lacking in the definiteness and precision required by the authoritative court decisions.

In *United States* v. *Cohen Grocery Co.* (255 U. S. 81) the Food Control Act of 1917 was declared invalid because it provided for penalties against any person for making of "any unjust or unreasonable rate or charge in handling or dealing with any necessaries." The defendant company there demurred to the prosecution on the ground that the counts were "so vague as not to inform

it of the nature and cause of the accusation." The Supreme Court of the United States affirmed the following language of the lower court invalidating the statute:

"Congress alone has power to define crimes against the United States. This power cannot be delegated either to the courts or to the juries of this country.

"Therefore, because the law is vague, indefinite, and uncertain, and because it fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against it, I think it is constitutionally invalid, and that the demurrer offered from engaging in political activity is an absurdity.

H. R. 1576

This bill is entirely ineffectual because it speaks of the Communist Party as a political party, and seeks to keep it off the ballot. If Congress recognizes the Communist Party as a political party, it cannot deny it a place on the ballot. To do so would be a contradiction in terms. Political parties under our system of government are entitled to equal treatment. Prohibiting a political party fro mengaging in political activity is an absurdity.

H. R. 1576 does not meet the Communist problems at all because, although it aims at prohibiting Communists from becoming candidates for political office, it does not prohibit Communists from serving in appointive offices nor does it keep them out of industry, labor, and scientific laboratories where they can work to undermine the entire American scheme of Government and wholly destroy America as we know and love America.

H. R. 5941

The phrase "reasonably presumed" in this bill renders it entirely valueless. Such a standard of proof offends against all the decisions of our courts which demand precision and definiteness in criminal statutes, as already pointed out a number of times in this brief. This bill says that it shall be "the policy of the Congress and the purpose of this Act to protect the United States against un-American activities, organizations, and persons, etc." As heretofore stated, this language lacks the precision required in criminal statutes. This bill refers to the Communist Party as a "political organization." Such a designation emasculates this proposed legislation completely.

H. R. 6943

This bill provides for a bipartisan commission to study the question of outlawing the Communist Party. If there is one thing this country does not need, it is any further commissions to make further studies on the Communist Party. Numerous commissions and committees, thousands of hearings, and tens of millions of words have proved the Communist Party beyond the peradventure of the shadow of a doubt to be part of an international conspiracy aimed at our very destruction. What is needed now is not study, but action.

H. R. 7405

This bill states that accused Communists must be given "every legal opportunity." What is meant by that? Communists would always say that they have not been given "every legal opportunity." What standards would be introduced to show that the very last legal opportunity had been profferred and accepted?

This bill would punish those who "advocate" the "overthrow of the United States Government." It does not say advocate the overthrow of the Government *by force and violence*. *H. R. 7405* would thus offend against the first amendment to the Constitution. This bill would outlaw the Communist Party by name. If the Communist Party changed its name, the legislation would not touch the new organization.

H. R. 7814 and H. R. 7846

These bills have been withdrawn.

H. R. 8363

This bill seeks to outlaw the Communist Party by name. A change in name would leave this attempted legislation high and dry. Furthermore, this attempted legislation could never pass the tests of precision required in criminal statutes.

House Joint Resolution 346

This is a ballot measure and completely innocuous.

S. 200

This bill refers to the Communist Party as a "political organization" and is, therefore, obviously doomed to failure. You cannot outlaw a "*political organization*" in the United States.

S. 2572

This bill says "that the increase in membership of the Communist Party of the United States would immediately endanger the Government of the United States," thus suggesting that there is no danger if the Communist Party is allowed to remain as is. Another serious defect in this attempted legislation is that it suggests that members of the Communist Party are coerced into conspiratorial activities. Coercion negatives criminal intent, and without criminal intent there can be no crime. This bill contains other shortcomings which invalidate it.

H. R. 7894 and H. R. 8326

H. R. 7894 has been withdrawn. H. R. 8326 is a copy of H. R. 7894 and would be effective except that it does not define "membership" in the Communist Party. It was because of this deficiency in H. R. 7894 that it was withdrawn by its sponsor and rewritten into H. R. 8912, which I will analyze later.

H. R. 8326 would be of no use for the following reason. Once the Communist Party is outlawed, its members will probably go through some ostensible act of resigning from the party. However, after ostensibly resigning they will continue to operate as in the past, participating in all the revolutionary activities which are part of the stock in trade of membership in the Communist Party. However, if indicted as members of the Communist Party, it will be enough for them to deny membership by simply producing from the files of the party the written resignation, and the Government would then be powerless to proceed. Without a definition of Communist Party membership, any bill seeking to prosecute members of the Communist Party is written in water.

H. R. 226

Section 1 of this bill is in a measure reproduced from certain paragraphs in section 1 of the Internal Security Act of 1950, and is only explanatory.

Section 2 of this bill makes the bill valueless. It provides that the Attorney General shall prosecute "when he has reason to believe such persons [Communists or ex-Communists] have committed any offense punishable by any law of the United States." As our Federal courts have stated, "Every criminal statute creating a new offense must be so explicit in its terms as to inform those who are subject to penalties under it what conduct on their part will render them liable." How would those subject to the penalties in H. R. 226 know what actions would give the Attorney General "reason to believe" that an offense has been committed. Offenses against the United States must be written in the United States Criminal Code where they may be seen and read; not in the brain of the Attorney General where they cannot be seen or guessed at.

Section 3 of H. R. 226 is extraneous to the subject.

Section 4 has to do with the statute of limitations.

Section 5 would be ineffective, because it punishes anyone who would "collaborate," but it does not say what constitutes collaboration. As was said in *Musser v. Utah, supra*, "Legislation may run afoul of the due-process clause because it fails to give adequate guidance to those who would be law abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused."

Section 6 has to do with espionage.

Section 7 would be value less because it speaks of "spies" without defining spies. This section punishes "any person who is found lurking as a spy." This phrase is more dramatic than legal. H. R. 226 would obviously be unconstitutional.

H. R. 3398

This bill is the same as H. R. 226 with the exception that it adds a section 8, having to do with nationality. Obviously it cannot pass the test of constitutionality any more than H. R. 226.

H. R. 8489

This bill has to do with priority in trials involving subversive activities and with the statute of limitations. It has nothing to do with outlawing the Communist Party.

H. R. 8948

This bill is of no value since it does not define membership in the Communist Party and it refers to the Communist Party as a "political organization." A political organization, under our Constitution, cannot be declared a criminal organization.

H. R. 8912

The only bill before this committee which, in my judgment definitely, conclusively, and unequivocally puts the Communist Party of the United States out of business, and does it constitutionally, is H. R. 8912. Without unnecessary verbiage and without any circumlocution it states that:

"The Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations and all other organizations, no matter under what name whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are hereby declared illegal."

The bill then specifically penalizes membership in these illegal organizations. Membership is not left to guesswork or conjecture. It is spelled out in such a manner that it blocks every possible subterfuge that a member of the party might present in the endeavor to conceal his membership.

When this bill was first printed, a typographical error appeared in paragraph 9, section 4. The bill was then reprinted. In view of the fact that the first printing may have gotten considerable distribution before the error was rectified, a copy of the corrected bill is attached hereto.

(The text of the bill referred to has been included in these hearings along with the texts of other bills.)

I recommend, without reservation, that the House Committee on the Judiciary report out favorably H. R. 8912 with the recommendation that it do pass.

Respectfully submitted.

MICHAEL A. MUSMANNO.

STATEMENT OF HON. HARLAN HAGEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the committee, my resolution declares that our courts have found that there exists a revolutionary Communist conspiracy committed to the overthrow of Federal and local divisions of government by force and violence through its parent party and its affiliated, subsidiary, and frontal organizations and the members thereof. These organizations are declared to be illegal and devoid of the rights, privileges, and immunities belonging to legal organizations in the United States. The resolution further provides that whosoever is a member of or participates in the revolutionary activities of these organizations knowing the said object or purpose are guilty of a Federal crime punishable by a maximum of 10 years in jail or a fine of $10,000 or both.

In effect I have declared the illegality of the organizations referred to and have made membership or participation in the activities of such organizations a penal offense if such membership or participation was entered upon with knowledge of the revolutionary purpose of the particular organization including Communist fronts. If its provisions become law violations thereof would be prosecuted in our courts according to the practices and methods of American jurisprudence including requirements of reasonable cause for filing an indictment or information.

This legislation and similar legislation should be most carefully considered in order that its justification be established and that workable definitions should be established for defining a penal offense. These considerations apply to any penal legislation but are particularly vital here because we are dealing with an extension of the concept of criminality to activity which often does not wear the raiment of overt acts of violence or subversion and is often understandably confused with ordinary political or philosophical inquiry or action.

I have no intention in offering this legislation to foreclose the right to minority opinion about proper answers to our political, social, and economic

problems. I agree with Justice Robert H. Jackson of the Supreme Court when he said, "If there is any fixed star in our constitutional constellation it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." I am certain that we can afford to tolerate any opinions which are advanced, however erroneously, as a proper method of securing the interest of the people of the United States, provided that it is true that the proponent is not seeking thereby to promote the interests of a foreign sovereign and is a person who offers his mind and body to the service of the United States in peace or war without qualification and in the belief that this country may be imperfect, but it is still the best country in the world.

A Communist does not have this true faith and loyalty to the United States. He is not a mere critic of our institutions or a reformer thereof. He rejects the worth of all our institutions. He is subject to an iron mental discipline emanating from a foreign sovereign which is our declared enemy. He believes that any lie, any dissemblance, any action whatsoever is justifiable if it carries out the latest directive from the Kremlin and promotes the ultimate triumph of a revolutionary proletariat in this and other countries. He is a complete moral bastard and more effectively works against causes which he publicly endorses because of their appeal to reformers than he does against the capitalist whom he traditionally caricatures and attacks.

In other words, it is naive to assume that communism is some kind of a native radicalism. Rather it is an un-American conspiracy directed by foreign masters and it should be treated as such.

My offer of this legislation is not designed to feed the beast of demagogery which has been loosed in this country and has fattened on the fears of an implacable foreign enemy in an atomic age. In fact, its enactment will do much to clear the atmosphere of suspicion by which the Communists and their right-wing counterparts divide and conquer by substituting American methods of prosecution for asserted offenses against the Government for present legal and undefined acts of association or advocacy, sometimes provable only by the rankest hearsay and often lacking in that element of knowledge which is the basis of punishment or other adverse judgment in the American tradition.

My offer of this legislation does not stem from any belief that we are in danger of losing our collective American mind to internal subversion. In a democratic forum of ideas our American traditions of free enterprise, humanitarianism, and religion can defeat Communist ideas any day of the week. The danger to America arising from internal communism comes from its ability to pervert otherwise good causes and its ability to attract party followers into the channels of sabotage and espionage to the point that we must regard every true Communist as a potential spy or saboteur. For these reasons we must bar the door to the solicitor and hucksters of this foul movement and my resolution will accomplish that closure.

Per se Communist publications will have to cease their perverted and inflammatory journalistic explorations. Liberals as well as conservatives, if these expressions mean anything in these troubled times, should welcome the disappearance of these sinkholes of untruth. Communist demagogs will no longer be able to defeat good causes for which they have a secret revulsion by their advocacy in the interests of expediency and the demagogs of the extreme right will no longer be able to sell their merchandise on the sole premise that they are taking a position different from the position of the extreme left. Parenthetically I would note that my resolution applies to any organization, Communist or non-Communist, which seeks the overthrow of the Government by illegal methods. Reasonable people, therefore, who seek American answers to our problems of preservation or change, will be less likely to be forced into a nutcracker between the extreme right and left which forced the disappearance of democracy in Germany and produced Adolf Hitler. Like the snows of tomorrow the fanatics of the totalitarian left and right will fade away or be left talking to and influencing each other with no access to the bulk of our citizens.

We will have a weapon to terminate the activities of Communists and other violent radicals in setting up false fronts or penetrating existing legitimate organizations.

I submit that this legislation is necessary to a proper treatment of security and radicalism dedicated to mass violence in this country today. I trust that you, in your good judgment, will approve its passage.

(Whereupon, at 10:50 a. m., the committee was adjourned until 9:30 o'clock Monday, April 12.)

INTERNAL SECURITY LEGISLATION

MONDAY, APRIL 12, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:30 a. m. in the committee room of the House Committee on the Judiciary, the Honorable Louis E. Graham (chairman of the subcommittee) presiding.

Present: The Honorable Messrs. Graham, Walter, Hyde, Feighan; and the Honorable Ruth Thompson.

Mr. GRAHAM. The subcommittee will proceed. We are honored to have with us today the Attorney General, Mr. Brownell. We are very pleased to have you join us, Mr. Brownell. We appreciate very much your coming.

STATEMENT OF HON. HERBERT BROWNELL, JR., THE ATTORNEY GENERAL OF THE UNITED STATES; ACCOMPANIED BY J. WALTER YEAGLEY, FIRST ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Attorney General BROWNELL. Thank you very much, Mr. Chairman.

In talking about these bills this morning that the committee is considering, I thought that I would review briefly for you first the present law on the subject, because we have to have that clearly in mind before we can really discuss the proposed new legislation.

Our principal legal weapons at the present time that are aimed most directly at this problem of communism itself are the Internal Security Act of 1950, the Smith Act, and the immigration and nationality laws. Those are our three principal weapons. What do they do?

The Internal Security Act of 1950 provides a very carefully thought out approach to meet the special menace of the Communist conspiracy by striking at its most vulnerable point, and that is the secrecy that masks its foreign domination and its devious methods.

The Internal Security Act makes formal findings that the Communist movement in the United States is a part of a foreign-dominated worldwide conspiracy to overthrow all free governments by force and violence.

I think some of the members of this subcommittee were in the House when that act was passed. You will remember that finding was made, and the Congress officially took that stand.

It requires those organizations that are operating in the United States as a part of that conspiracy, those defined as Communist-action

organizations or Communist-front organizations, to register; and the Communist-action organizations must disclose their members and their officers and their financial backing.

(Discussion off the record.)

Attorney General BROWNELL. I was just describing, Congressman Walter, the laws that are presently in effect on this general subject. I hardly need to do it for your benefit, because you have helped draft some of them. I was, on page 1 of this brief, explanatory statement, discussing the Internal Security Act of 1950, which set up the Subversive Activities Control Board.

Mr. WALTER. Maybe this would be a good place, Mr. Brownell, to interrupt your prepared statement by asking you whether or not you are finding it easier to deport aliens under the new law than it was under the old law.

Attorney General BROWNELL. I have only operated under the new act. I have discussed it with some of the career people in the service who have operated under both laws, and from what they tell me, it is an improvement on the old law in getting rid of some of these subversives.

Mr. WALTER. It has been very interesting to me to read the headlines in the New York and Philadelphia papers in recent months, and find that under the provisions of the iniquitous McCarran-Walter Act we are getting rid of a lot of very undesirable people.

Attorney General BROWNELL. Yes, sir.

Mr. WALTER. I want to congratulate you on the record you are making to bring that about.

Attorney General BROWNELL. Thank you, sir.

Mr. WALTER. Mr. Graham and I sat for nearly 5 years working on this law. The thing which impressed both of us was the fact that there were thousands of aliens in this country against whom deportation proceedings should have been instituted. It is very refreshing to see that you at long last are taking the necessary steps to rid our republic of these people who make only trouble for us.

Attorney General BROWNELL. I wonder if I could make a comment on that.

There is one bill we have introduced here, which I was not planning to discuss in any detail this morning, but you have given me a chance to put in a plug for it.

Mr. GRAHAM. We would be glad to have you do so, Mr. Brownell.

Attorney General BROWNELL. One of our greatest handicaps in trying to carry out this program has been that after the hearing has been held, the deportation order has been issued, the appeal has been heard and decided in the Board of Immigration Appeals, we go ahead and get the travel papers and go to pick the alien up, and he then sues out a writ of habeas corpus, and then that goes all through the court processes. By the time that the appeals have all been heard he comes back and starts another habeas corpus proceeding or perhaps a declaratory judgment proceeding. In some cases it has been almost endless.

We have proposed a bill which I hope is in this subcommittee to try to cut off some of these successive applications to the court for pure delay. I mean, after the thing has been heard on the merits ad nauseam. That is to say that after the Board of Immigration Appeals has acted, if they have ordered the man deported or confirmed the

order of deportation, rather, he will only have, say, 60 or 90 days in which to make an application for habeas corpus, and that if he does not take that action within that time he is barred from any further judicial action except in the most extraordinary circumstances.

Mr. WALTER. We discussed that. I think it was Senator Ferguson who took the position it would be unconstitutional to take the step you are now suggesting. I think he convinced our entire joint committee that he was correct.

What you say, of course, is true, General. It is particularly interesting because of the charges that have been made that aliens are now deprived of legal process. As a matter of fact, in order to make certain that there would not be any whittling away on the Administrative Procedures Act, we spelled it out over again in the immigration code.

These charges that the alien has not the same rights, if you please, or privileges that a citizen has, are just simply made up out of the whole cloth.

Attorney General BROWNELL. I would like to have you take a look at this bill. It has been drafted by the men in the Solicitor General's Office, who have had this vast experience now on these successive applications. I think we have it in a form that would be constitutional.

Mr. GRAHAM. Mr. Brownell, may I say that the committee is very anxious to see that these delays are terminated. We will welcome the bill.

Attorney General BROWNELL. Thank you.

Mr. GRAHAM. We feel very much encouraged by the statement you are making today.

Attorney General BROWNELL. Thank you very much.

If I may go on, Mr. Chairman and gentlemen——

Mr. GRAHAM. Please do.

Attorney General BROWNELL. With a description of these three acts already in the statute books.

We have to review briefly before we come to a discussion of the new proposed legislation. Under this Internal Security Act of 1950, before any organization can be characterized as a Communist-action organization or a Communist-front organization, as you are familiar with, a full hearing is provided for before the Subversive Activities Control Board, and after that there is a right of judicial review to any party adversely affected.

There are two alternative results that can be anticipated from this registration requirement. First, as I say, the organization may register, and if it does, then it would not be outlawed or necessarily subjected to any penalty. But the purpose of the registration, of course, is that if the Communist movement operated only in the full glare of publicity, which this registration would bring about, its peculiar menace would be seriously impaired. So the registration provides full information as to its personnel and organization and financial backing. We believe it would go a long way toward furnishing us the means to protect ourselves.

While the registration would in all probability accomplish the desired result of diminishing the Communist menace, the law also wisely contemplates that some of these organizations may not register, may not comply with the law. So it provides that in the event a Com-

munist-action organization does not register there is a requirement for registration then not only of the officers of the organization but of each of its members, and each day of failure to register is made a separate offense, punishable by fine or imprisonment.

Under this alternative, action then might be instituted against individuals, in which case proof of party membership would be the critical fact.

Here is the point I want to make: Under the framework of this act and essential to its validity, under this Internal Security Act of 1950, which set up the Subversive Activities Control Board, is a provision that was deliberately put in there, section 4 (f) of the act, that the holding of office or mere membership in any organization, Communist organization, shall not constitute in itself a violation of that act or of any other criminal act; and, further, that the fact of registration could not be received in evidence in any criminal prosecution against the person registered.

We believe—and this was undoubtedly in the minds of Congress when they passed the act—that in the absence of that provision the registration requirement, in many of its contemplated applications, might be held to be a requirement that the person registering thereby give evidence incriminating himself, and the constitutional privilege against self-incrimination would in those instances operate to make the application of the act ineffective.

So it is apparent that if we tried to enact legislation making membership in the Communist Party per se a crime it would be in direct conflict with these provisions of the Internal Security Act. If membership alone, in other words, is made criminal, to require a member to declare his membership is to require him to give self-incriminating evidence. By nullifying this portion of the act, its entire operation, we are afraid, would be jeopardized, unless there is added, for example, a grant of immunity which would be so broad as to vitiate the legislation now proposed.

Mr. WALTER. Even assuming that is true, do you not think that would be preferable? By outlawing the activities I will agree with you entirely that the person could not be compelled to register, where this registration would in fact incriminate him, by the act of registering. Do you not think now that we have had our experience with that law we might well go on to this other method of combatting this menace and abandon the registration?

Attorney General BROWNELL. I wonder if I could complete my argument for another 5 minutes, because I come exactly to that point, which I think really is the critical one we have in front of us this morning.

Mr. WALTER. All right.

Attorney General BROWNELL. We regard the Internal Security Act as an effective instrument. Under it, after very ardous hearing, the Communist Party of the United States has been found to be a Communist-action organization and required to register. This determination of the Subversive Activities Control Board is now on appeal before the Court of Appeals of the District of Columbia, and comes up this month.

While this is the first and most important case, I would call the attention of the members of the subcommittee here this morning to the fact that we are presently also proceeding against 12 other organiza-

tions. Yet all of our preparation and all of the carefully drawn provisions of the Internal Security Act would be substantially nullified even before it has been given a fair chance to reach the success it promises if we would enact, it seems to us, legislation that provided that membership in the Communist Party per se was a crime.

We believe that the legislation would really not add anything in lieu of this act it would vitiate, because failure to register under the Internal Security Act carries with it stiff penalties.

In other words, suppose they now carry out their threat and refuse to register under the Internal Security Act of 1950? Then by their own actions they have really outlawed the Communist Party in this country, because they will then become subject to fine and imprisonment.

It would be our aim and our objective, if the act is upheld on appeal, to give them this chance to register. If they carry out their threat that they will not register, we will then be able to punish them criminally under the act.

Mr. WALTER. Each individual member?

Attorney General BROWNELL. Each individual member.

Now, we have another powerful weapon against the Communist conspiracy in the Smith Act. Of course, many of you are familiar with that.

That went through the courts, and in 1951 the first conviction of the 11 top Communist leaders was upheld under that act. Since that time there has been a sustained use of this weapon, with the result that 105 leaders of the conspiracy have been indicted, and of these 67 have been convicted. 14 are on trial now, and one more trial starts shortly.

Under this act we hope to cripple the domestic leadership of the Communist Party in this country and destroy a large part of its effectiveness, on the simple ground that the best way to go after a conspiracy—and I am sure this was in the mind of Congress when they passed the act—is to get the leaders of that conspiracy.

Now, it should be observed that membership in an organization which is dedicated to the violent overthrow of our government, knowing the purposes thereof, is made criminal by one of the sections of the Smith Act, section 2 (a) (3), which provides:

"Whoever organizes or helps to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with any such group, society, or assembly of persons, knowing the purposes thereof * * *

is guilty of a crime.

Mr. HYDE. Mr. Chairman?

Mr. GRAHAM. Mr. Hyde.

Mr. HYDE. General, has the Communist Party been officially found to be such an organization?

Attorney General BROWNELL. It has.

Mr. HYDE. Then anybody who is a knowing member has violated the Smith Act?

Attorney General BROWNELL. That is the point I am trying to make. Of course, we think we ought to wait until this appeal is argued, to be sure we are on solid ground.

The appeal under the Internal Security Act comes up next month. If we have that background then we will be faced with the question

of this section of the Smith Act. I think we can anticipate some rather interesting developments then.

Mr. HYDE. Thank you.

Mr. WALTER. I can give you some customers.

Attorney General BROWNELL. They would be welcome, I assure you.

Now may I go on with the immigration and nationality laws. Those are the three weapons in our arsenal today. The Internal Security Act of 1950, the Smith Act, and now the immigration and nationality laws.

The immigration and nationality laws are of obvious importance—Congressman Walter brought out that problem—because the domestic Communist movement is just a part of a worldwide Communist conspiracy, and the effectiveness of that conspiracy depends largely on the ability of its agents to travel freely into and out of the United States, or to remain here for long periods of time. Our ability to stop their entry, or to deport those who may have already entered, or to denaturalize those who may have acquired citizenship, strikes a serious blow at the Communist movement.

Then, finally, there are criminal statutes that are not specifically aimed at the Communist subversives, but which have also proved effective. Those, for instance, cover perjury and false statements and contempt, and the general criminal statutes which have been quite helpful.

For example, there is the case of Ben Gold, where I think you may perhaps have noticed that in the paper last week. He and his union, the fur union, have been furnishing funds to the Communist Party, and substantial sums. While we were not able to get him at least under any of these three principal laws we were able to get him for lying under oath as to his membership in the Communist Party.

Mr. WALTER. Mr. Brownell, one of the things which is most distressing to me and to other members of the Committee on Un-American Activities has been the attitude of employers who are represented by unions of that type, that you have just mentioned. Last week at Albany the director of a large corporation attempted to get me in a back room and suggest that perhaps we ought to not call a certain witness, since we knew he was a Communist, and this director took the position that the relations between employer and employees were so good that they were afraid that if another union represented the men it would be more militant and more difficult for the employer to do business with the union.

Attorney General BROWNELL. I have been disturbed about that myself, Congressman. It comes up really not only in the Communist cases, but in others. We ran right up against that thing in the New York City waterfront strike here the last month. We were very worried about the fact that some of the employers there were trying to deal with this ILA group, which has been recognized—everybody officially recognized that they were infested with racketeers, and they were disrupting the waterfront there illegally. I think there were some of the employees who seemed to have relations with them going back over a period of years. I had the same suspicion in mind that you had, that they felt if a new union came in that was bona fide and law abiding they might have a little tougher time bargaining with them, so they were willing to play along with a racket-infested union.

I think what you say is undoubtedly true at several plants, so far as the employer dealing with the Communist-dominated union is concerned. That is one reason I am going to come in my statement here this morning to a proposal which I think will help eliminate that, and take away the alibi they have used up to now.

Mr. GRAHAM. You understand that we depend so much upon Mr. Walter, with his long experience and knowledge and work with the Un-American Activities Committee, plus the writing of the immigration law. As these things come up we would like to pinpoint them somewhat.

Attorney General BROWNELL. I like to do it that way myself, Mr. Chairman.

Most of the pending proposals to make Communist Party membership illegal per se provide a conclusive legislative finding that the Communist Party in the United States is dedicated to the overthrow of the government by force and violence. Unlike the acts I have mentioned, the Smith Act and the Internal Security Act, which two acts require the court to determine on the evidence the nature of the party and the legality of its activities, these new proposed measures seek to foreclose any court review of that fact. There is quite a distinction.

It is true that a legislative finding by the Congress that the Communist Party in the United States is dedicated to the overthrow of our Government by force and violence would be entitled to great weight in the courts. The Supreme Court has consistently recognized the illegal objectives of the Communist Party. Since now the executive, legislative, and judicial branches have all recognized the special character of the Communist Party, I will say I think it is unlikely that any court would hold such a congressional finding was arbitrary and capricious and so discriminatory as to be lacking in due process of law.

But on the other hand I would call your attention to the fact that the court might well hold that such a legislative finding must be open to court review, for nonreviewable fact finding by legislative edict or fiat might not afford due process of law. So under these circumstances it is not clear that the legislative finding would add anything of material importance.

More serious, however, is the provision common to most of these bills that a person is guilty of a crime if he knowingly becomes or remains a member of the Communist Party or of any organization having similar purposes, for to us in effect this means that membership in the Communist Party per se would be a violation of the statute even without any personal knowledge of its aims or purposes. There are some real doubts, we think, as to the constitutionality of such a provision, in the light of the recent Supreme Court decision that involved the Oklahoma loyalty oath, *Wieman et al.* v. *Updegraff, et al.* (344 U. S. 183), where the court said that—

> Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power.

You will remember that in the Dennis case, involving the 11 leaders of the Communist Party, the court held that an unlawful intent to overthrow the Government by force and violence was an essential ingredient of proof of violation of the Smith Act.

Mr. WALTER. May I interrupt you at that point?

Attorney General BROWNELL. Yes.

Mr. WALTER. How do you reconcile this decision in the Updegraff case with the long line of decisions that hold that the Congress is empowered to take whatever steps in its judgment must be taken in order to protect the security of the United States?

Attorney General BROWNELL. Well, that is a good question. Of course, our job on this end of the line, in the Department of Justice, is to point out to you the pitfalls or the dangers that we can see in the legislation. We do not do the legislating. You have to decide on the basis of all the factors.

We think that in this particular area there has been a noticeable tendency on the part of the court to not allow nonreviewable legislative findings to stand. That is what bothers us.

If the legislation were so drawn that mere membership were declared to be illegal, on the background of a legislative finding which was to be conclusive and not reviewable by the courts, we have doubts that the court would sustain it.

We call that to your attention. We cannot predict with certainty what would happen, but it does seem as though they are of the opinion that you must prove intent on the part of the individual, that he knew what he was doing, that he was a member of a world-wide conspiracy with knowledge of its purposes, as well as the fact that he was a member. Mere membership itself might not be enough.

Mr. WALTER. Mr. Brownell, the high opinion I have always held for your legal judgment has increased, because you are stating exactly what I tried to set forth in the bill I introduced. I think we have in that bill probably met the question that you raise. You see, there we do not say that membership per se constitutes a crime. In it we define certain acts, just as we define certain acts as constituting manslaughter or any other crime that is mal and prohibited. It seems to me we have met your objection.

Attorney General BROWNELL. Well, I was not going to comment on any individual bills today, but rather was going to try to point out the principle of law that I thought should be guarded against in consideration of any one of these numerous bills you have.

Mr. WALTER. I want to say I have been greatly impressed by the position you have taken with respect to carrying out the Smith Act, to its logical conclusion; namely, to wait for the decision of the Supreme Court and then proceed for violations of the other section. It may well be that that is the best approach.

Attorney General BROWNELL. That is really my main point this morning.

Now, I want to just jump over here, because I want to get to these new proposals.

It is estimated that the Communist Party in the United States today has about 25,000 active members. I would like to make the point also that to undertake to prove the membership of each of these individuals would be a tremendous task, where the party members no longer carry cards or any other identifying documents, so that proof of party membership in many cases might well be established only through the oral testimony of confidential informants, people whose value for such purposes would be thereafter completely destroyed. In the absence of documentary proof or of available informants, party membership would be provable principally by circumstantial evidence of party line activity and association. This is, of

course, in part the same evidence now used in prosecutions under the Smith Act. In most cases the statute to make membership itself a crime would not materially alter the problem of prosecution of Communists and the type of proof that would be required.

Moreover, I point out that to the extent that the enactment of such a bill would force the Communist Party movement underground and cause it to close its headquarters and terminate its publications, you might also consider the point at the same time that to that extent it would increase the difficult investigatory job of the FBI.

Mr. FEIGHAN. Mr. Chairman?

Mr. GRAHAM. Mr. Feighan.

Mr. FEIGHAN. It seems to me that even though it might increase the investigatory work of the FBI, would it not, on the other hand, ease their work because it would stop the easy dissemination of material by the Communists as a legal instrument?

Attorney General BROWNELL. Well, that is possible. It is speculative but possible.

I think a good case could be made for that, although you would also have to change your law which allows this Communist literature to come from outside. At the present time it comes in by the bale. While it is marked, that part of it which can be caught at the customs entrance comes in by the bale now.

Mr. GRAHAM. Mr. Hyde would like to ask a question.

Mr. HYDE. General is it not also true that practically all the Communists who have been caught so far—at least, those who have been caught in Government circles—have been underground Communists?

Attorney General BROWNELL. Yes, that is right. So far as penetration of the Government is concerned, obviously they do not use their above-board or above-ground leaders. They try not to use avowed members of the Communist Party.

Mr. HYDE. The ones who are really dangerous are the ones underground?

Attorney General BROWNELL. Yes.

Mr. HYDE. The ones on the surface would not be actually so dangerous.

Attorney General BROWNELL. They go back and forth, you know, underground and above ground. It is part of the same conspiracy, so I would not overlook the point completely. What you say it certainly one factor.

Mr. WALTER. General, who are the Communists that were caught in Government circles?

Attorney General BROWNELL. Well, we are going back to history now. I am not going to brand any individual as a Communist. I think subversive would be a better term.

Mr. WALTER. I have been reliably informed on that, and I so stated a long while ago. Make no mistakes; I hold no brief for these people who have brought so much discredit on the party I am proud to be a member of. They are neither Democrats nor Republicans. I think it is a very serious thing.

I would just like to know how many there are. I have been informed that there were seven card-carrying Communists last year.

Attorney General BROWNELL. I think it is important to realize the types of people that they use to get Government secrets. As I was

trying to point out, they do not use members of the Communist Party. That would be too easy. You can spot them and they would be out of it.

Primarily our study of the methods they have used against free governments shows that principally there are 3 or 4 classes of people they use to infiltrate the Government. They take people who are members of these Communist-front organizations. They have joined them without realizing they are under the domination of the Communist Party, but they get indoctrinated with some particular idea they like, and they get enthusiastic about it, and listen to these Communists in the front organizations. They are kind of soft on it. They are very useful agents getting in the Government to find out what the Government secrets are and almost unknowingly giving them away.

Mr. WALTER. Mr. Hyde used the word "caught."

Mr. HYDE. Will the gentleman yield?

Mr. WALTER. The Communists caught in Government circles.

I yield to the gentleman.

Mr. HYDE. In the first place when I put the question I had no idea of raising any political controversy.

Mr. WALTER. There is nothing political about this at all.

Mr. HYDE. The other point is that the people I had in mind when I asked that question were people such as Hiss and Judith Coplon and Mr. Remington. Whether they have been proved to be Communists or not I do not know, but to my satisfaction they have been proved to be underground Communists.

Attorney General BROWNELL. I think we are pretty well together on that.

Mr. WALTER. I think that is true, but there we have three. I heard all three of those cases in the testimony. There we have three. What other Communists were caught in Government circles, to quote my distinguished friend from Maryland.

Attorney General BROWNELL. I judge from what he said later that he is discussing the same thing I am trying to discuss, and that is the type of people used to obtain Government secrets.

Mr. WALTER. Let us assume that is what he means.

Attorney General BROWNELL. They are not Communist Party members.

Mr. WALTER. What about the type of people caught in Government circles who are aiding and abetting the Communists?

Attorney General BROWNELL. That would be a more accurate statement.

Mr. WALTER. How many were there?

Attorney General BROWNELL. As you know, you do not prove those things in court. You dismiss them when you suspect them. You do not wait until you prove in court that a man has violated a law before you take him out of a position where he might reveal Government secrets.

Mr. WALTER. I had a constituent call me not too long ago, who was dismissed from the navy yard because he licked his boss. He had had a few drinks, which he should not have done on the job, of course. He was fired for drunkenness. He came to me and complained to me because he was suspected of being either a homosexual or a spy. I said:

Well, Red, the only thing I can suggest to you is to get a letter from your employer in which he states that he fired you for being drunk on the job.

That is a man who was a veteran of the first war. He spent months and years, even, at Castle Point because one of his lungs had been gassed. He is branded by one of those long categories as I do not know what. Everybody falls in that.

It just seems to me, General, that there ought to be a way to protect that kind of person.

We started out with the discussion of Communists caught in Government circles. We find there were three. Then that was amended by saying "people who had aided Communists who were caught in Government circles."

Do you not think it would be fair to somehow or other devise words of art which would distinguish one from the other?

Attorney General BROWNELL. Well, I think so. I certain do. I think we all ought to be most careful about that.

I do want to point this out, Congressman, as an additional point: Many of these people who do this are not only not Communists, but they are also not disloyal. They are almost unknowing tools.

Take what we call the "blabbermouth" or the chronic drunkard or the pervert or someone who is subject to blackmailing. Suppose he is just a loyal American and has relatives behind the Iron Curtain and is subject to blackmail. Those things have nothing to do with disloyalty whatever, and no unworthy motives should be attributed to them. But we do have this problem of protecting Government secrets.

That is where the right of the Government to survive runs up against the privilege of the individual to work for the Government. The fact that they have to be dismissed from the Government should not be held against them at all. They are just not the particular types of people who would be entrusted with Government secrets, because there is a weakness there.

Mr. WALTER. Then would it not be better to dismiss them on the grounds that their services were unsatisfactory, without the implication as to subversion?

Attorney General BROWNELL. There has to be a connotation as to what we are trying to get at. I do think it would be very unfair to brand them as disloyal, and I have said so many times.

Perhaps, Mr. Chairman, I think we have discussed enough the existing laws.

I would like to comment now, starting at the top of page 8 of my prepared statement, about some proposed new legislation that I think, based on our experience, would be of material help to us in fighting this Communist menace.

I believe they are all in front of the subcommittee or will be shortly referred to this subcommittee.

We presently have under study and will shortly submit some amendments to the Internal Security Act of 1950 which will broaden the registration provisions to include not only the Communist-action and the Communist-front organizations but also labor unions or businesses which are under the domination of Communists and which are in a position to damage our national security. We think this amendment would prove of great importance in removing a potent Communist menace to the operation of our defense facilities.

As you know, back in 1940 or around there the CIO threw out of its ranks a number of unions in very critical industries, such as Maritime and Communications and Mining and what-not, because they were Communist-dominated. It was a fine action on their part.

They have since pointed out, and so has the A. F. of L. and so has this committee and the corresponding Senate committee, that there is a real danger to our national security to have these expelled unions under Communist domination, but there is no adequate provision in the law by which you can go after them.

This proposal which we will present very shortly now I think would give us the legal weapon so that we could expose and take appropriate action in the cases of these Communist-dominated unions or business organizations.

I will try to have our draft of this bill ready in 2 or 3 days, and send it up. I would like to have you take a good look at it.

Mr. GRAHAM. We certainly will.

Attorney General BROWNELL. I believe it will furnish the machinery for the first time in meeting this problem, which you have so often discussed. We have never actually gotten down to legislation before to combat it.

The second proposal which we hope to send up to you this week is an amendment which would permit the removal from industries which are important to our defense of those persons who because of their sympathies and associations and past records, cannot safely be permitted access to such industries.

I will just explain that briefly. At the present time if a person is working on a classified defense contract in a plant, if he has a record which would indicate that he might be a potential saboteur or espionage agent, the hearing is provided for and he can be eliminated and removed from the position where he is working on a classified defense contract.

That principle was established by the Congress. It has worked to the satisfaction of industrial organizations and the unions, too.

We propose to extend that principle to others who are working in defense plants in time of national emergency, but who are not actually working on the classified contract. The best example I could give you is the fellow who is running the powerplant, who is in the most important position in the whole plant for sabotage. Yet the present law does not get to him.

We propose an amendment here which we will send up to you this week which would cover that other class of persons.

Third, we have already transmitted to the Congress a comprehensive revision of the laws relating to sabotage. In general the two purposes we had in mind in this legislation were, first, to broaden the definition sections to include within them modern war materials and new defense utilities which are now important to national defense; and, second, to make these laws uniformly applicable in time of national emergency as well as in time of war.

It is a simple provision. I am sure it will meet with widespread approval.

Mr. FEIGHAN. Mr. Chairman, may I interrupt?

Mr. GRAHAM. Surely.

Mr. FEIGHAN. General, I introduced a bill which would accomplish what the President recommended in his State of the Union message,

and I thought it even went further and was more complete. I just wondered if you have had an opportunity to read my bill and if you would care to make any comment on it. I would be glad to have any comments.

Attorney General BROWNELL. I have that down here as No. 7. I will come to that in just a minute, if I may.

Fourth is the statute of limitations. The Department of Justice urges the enactment of a bill to extend from 3 to 5 years the statute of limitations applicable to all noncapital offenses for which no specific limitations are otherwise provided. We believe that increasing the time limitation will increase the opportunities for detecting and prosecuting Communists and other subversives guilty of criminal activities.

I think that is noncontroversial.

Mr. GRAHAM. Do you think 5 years is enough?

Attorney General BROWNELL. I will leave that to the Congress. It should be extended. We have no fixed idea as to the number of years.

Mr. GRAHAM. Of course, I have had no direct connection with the Committee on Un-American Activities, but as reflected in the legislation from this committee, in many, many instances the period of time runs beyond even 5 years for the unearthing of the long details and working the thing out. My own personal opinion is that it ought to be either 7 or 10 years.

Attorney General BROWNELL. I would respect your judgment on that, Mr. Chairman, because of your experience.

Mr. WALTER. You had a reason for setting forth 5 years, Mr. Brownell?

Attorney General BROWNELL. As I say, we are anxious to get it extended. There is no magic formula which says 5 or 6 or 7. Around that area would suit us.

Espionage is No. 5. We are recommending that peacetime espionage be made a capital offense, and also an amendment to correct a deficiency in the present law, section 794 of title 18, which now prevents the imposition of a term of imprisonment for more than 30 years for wartime espionage, which is already a capital offense. There is just a fluke in the law.

Mr. GRAHAM. May I interrupt again, please?

Attorney General BROWNELL. Yes.

Mr. GRAHAM. Some of the witnesses have indicated here there could be no peacetime treason. Would you care to express yourself on that?

Attorney General BROWNELL. There can certainly be peacetime espionage. It comes awfully close to it.

Mr. GRAHAM. All right.

Attorney General BROWNELL. No. 6 is harboring fugitives.

We have also recommended and there has been introduced H. R. 7486, which will increase the penalties for harboring fugitives, which is now only a misdemeanor. We certainly have that up right now in California. These two Communist leaders were caught out in the Sierra Nevada Mountains by the FBI, and are just about to come to trial on the west coast. The offense is only a misdemeanor, which is obviously wrong.

Mr. WALTER. Can there not be a count added to that indictment, making it a conspiracy?

Attorney General BROWNELL. We did add a count there.

Mr. WALTER. And then bring it within the broad, general provisions of the Conspiracy Act, where the punishment is greater?

Attorney General BROWNELL. I wonder if I could ask Mr. Yeagley to answer that.

Mr. YEAGLEY. I think the approach is as an accessory after the fact.

Attorney General BROWNELL. And that does carry a year.

Mr. YEAGLEY. Which makes a more difficult case of proof than would the mere harboring.

Attorney General BROWNELL. That is what we did. We combined it with a count of that kind. I remember now.

Mr. YEAGLEY. That is right.

Attorney General BROWNELL. That does carry a year.

I think we would all agree that the easier conviction would be the harboring itself, without the necessity of proving the conspiracy, and that there should be a greater penalty on that than there is at the present time.

Now, Congressman, we come to this expatriation point you mentioned. The President's recommendation, I think, has been introduced in H. R. 7325. I am not sure who the author is. That provides for the expatriation of United States citizens convicted of Smith Act violations and certain other offenses.

A similar bill, but more extensive, Senate 2757, which also includes deportation, was introduced in the Senate on the same day.

Loss of citizenship, we think, is a fitting punishment for those who by their actions prove themselves to be alined with foreign interests inimical to the United States.

In answer to your question specifically, I am sorry to say I have not read your bill. I do not know just how it compares with H. R. 7325, or how it differs from it.

Mr. FEIGHAN. I have not looked at it recently, and I have just asked the young man to go out and get it.

My bill specifically enumerates all of the statutes of espionage and treason and those pertaining to our national security of which there are about 10 or 11.

Attorney General BROWNELL. Yes.

Mr. FEIGHAN. Mine was more inclusive than that which was introduced in the House, I think, by our chairman, Mr. Reed. I have not checked that since.

Attorney General BROWNELL. We will get hold of a copy of that and would be glad to send up comments on that.

Mr. FEIGHAN. I would be glad to have them.

Mr. WALTER. General, to what country would you deport a person born in the United States?

Attorney General BROWNELL. It is the same problem we have, Congressman Walter, of deporting all of these people whose origin was in countries behind the Iron Curtain. We cannot always do it.

I think you were one of the first to bring out that there are hundreds of those people in the country today who could be deported if we found any country which would take them.

However, let us assume for the moment that we cannot find any country that will take them. It seems to me it is still very important to take away the citizenship of these people who are trying to

overthrow the Government by force and violence, because one of the things they prize the most is their ability to speak for propaganda purposes around the world as American citizens. We think it would be a significant blow to their propaganda efforts if we took away that American citizenship, so that they would be marked to that extent and would not be able to propagandize around the world as being people our Government recognizes as citizens.

Do I make my point clear?

Mr. WALTER. Yes, of course. But in my mind it is no problem at all to deprive a person of his rights as a citizen.

I have frequently been attacked because of the provision in the Immigration and Nationality Code which makes it possible to deprive a naturalized citizen of his citizenship where he joins a Communist organization. I will say to you frankly, if I had had my way there would have been no statutory period at all, but Mr. Graham and some of the wiser heads fixed a period of 5 years.

I just cannot see how you can say that a ntive-born person is going to be deported. I cannot see it unless it is on the theory that he has taken the oath of allegiance by his activities on behalf of a foreign government. Of course, there would be no question about depriving him of his rights, but where would you send him?

Mr. GRAHAM. May I interrupt for a moment?

Attorney General BROWNELL. Surely.

Mr. GRAHAM. Keep in mind, Mr. Walter, the bill introduced by our late colleague, Mr. Hobbs. He thought of setting up concentrations camps during World War II. Would you go that far and put them in camps, or not?

Mr. WALTER. In view of the fact that I wrote the report on Mr. Hobbs' bill and I was 1 of the 2 Democrats who spoke on behalf of it, and we could not get a record rollcall, I would have to say that is a very good measure, Mr. Graham.

Attorney General BROWNELL. If I may go on, No. 8 is perjury. We have requested the introduction of legislation to amend the perjury chapter of title 18 so as to eliminate the need we have at the present time to prove which of different inconsistent statements made by the same person under oath is false in order to obtain a perjury conviction.

I think some of you have discussed that in previous meetings of your committee, and it is a severe handicap to perjury prosecutions now.

Then I come to two measures I have talked about a lot, but not to this subcommittee. I want to impose upon your hospitality, if I may, to discuss one of them today.

Mr. GRAHAM. We would be glad to hear you.

Attorney General BROWNELL. The wiretap I will not need to mention, because the House has acted on it.

On immunity I do want to discuss it in as much detail as possible. We think one great menace of the Communist conspirators is in the potential of its "if and when" activity. The Communist movement is the advance guard of the military power of Russia. It has a professional, skilled, and highly organized and mobile cadre. What it does now, dangerous as it is, may be far less dangerous than what it might do if permitted to lay deliberately its plans for action against

the time when its small, but disciplined force, might tip the scales against our survival.

The bulk of the Communist adherents is now under orders to place themselves in readiness in position where, at the propitious moment, they will be available to carry out the dirty business—I may say—of sabotage, espionage, and subversion, and disrupt internally our citadel of defense. Therefore, it is essential that we secure the means of informing ourselves in advance of where these conspirators will seek to act, and to forestall them before their damage is irreparably done.

We believe that the greatest single source of information as to the ramifications of the Communist conspiracy is the conspirators themselves. To avail ourselves more effectively of that source, we have asked for the enactment of immunity legislation. I believe there has been introduced Congressman Keating's bill, H. R. 6899. It would permit the Federal prosecutor to compel testimony under certain conditions by witnesses before the courts or before the grand juries or before congressional bodies, by granting to the witnesses under compulsion immunity from prosecution for matter disclosed in such testimony.

We believe that with such a law the Government could obtain vital information as to Communist identity and aims, and that it would also provide further leads to assist the investigations of the FBI.

Now, I guess you know better than anybody else on the Hill, gentlemen, that we have had this constant stream of witnesses over the past month who have relied on the fifth amendment. There is considerable question in the minds of many people as to whether some of those people are worried about incriminating themselves or whether they are trying to get out of testifying as to criminal activities of other people. We think the best way to find out, as I say, is to go to the conspirators themselves. If you have a seasoned prosecutor he can tell pretty well whether or not it would be advisable for the purpose of getting the higher-ups to give immunity to some of the conspirators themselves.

In the State courts, of course, this has been going on for a long time. It has been used very successfully. It is a device to break up illegal criminal conspiracies in many parts of our country.

As a matter of fact, the Congress has given the authority to most, if not all, of the Federal regulatory commissions, such as the Interstate Commerce Commission, the SEC and the FCC, to grant immunity, but for some reasons or other a similar grant of immunity has never been given to the Department of Justice in criminal cases.

We think there is no constitutional question involved here. We have briefed that, and we would be glad to file a legal brief with this committee, if you desire to have it. We think this legislation would stand up and that it would be of material assistance to us in breaking up this Communist conspiracy.

Mr. GRAHAM. May I say that we would be only too glad to receive your brief. It would be of wonderful help in our work.

Attorney General BROWNELL. May I file that as a part of the hearings today?

Mr. GRAHAM. Yes.

Attorney General BROWNELL. Thank you sir.

(The brief is as follows:)

IMMUNITY FROM PROSECUTION VERSUS PRIVILEGE AGAINST SELF-INCRIMINATION BY HON. HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

The Fifth Amendment of the Federal Constitution provides that no person "shall be compelled in a criminal case to be a witness against himself." The courts have construed this provision to mean that a person may remain mute before a Congressional committee, a grand jury or trial court, if a criminal charge, no matter how remote, may possibly be asserted against him with respect to any matters as to which he is questioned. Subversives and criminals have been quick to rely upon this provision which was written into our Constitution to protect law-abiding citizens against tyranny and despotism.

Many former Federal employees and members of the Armed Services holding key jobs have also refused to answer the $64 question about their Communist affiliations. The problem is a live one too before universities, and other private and public schools, where professors and teachers have claimed their privilege in refusing to testify as to their previous and present associations. The abuses to which the constitutional privilege has been put by the long parade of witnesses suggests the desirability of reviewing the subject to determine whether it is possible to strike a fair balance between the Government's right to obtain vital information and the individual's right not to incriminate himself.

In discussing this important problem with you, I plan first to deal with the history of constitutional privilege and the exchange of immunity for it; second, the function of Congressional investigations and how they as well as courts and grand juries have been thwarted by resort to the privilege; third, pending proposals before Congress for an exchange of immunity for privilege and my suggestions for improvement of these proposals.

First, a few words about the history of the privilege.

The privilege against self-incrimination has deep roots in early English history. The tyranny of Charles I during the years 1629 to 1640 in dealing with nonconformists, and the Star Chamber proceedings in which innocent persons were tortured into confession of crimes which they did not commit, engendered such hostility among the people that strong demands were made to end compulsory testimony as far back as 1647.[1] By early 1650 the privilege against self-incrimination was so well established in the common law of England that it was never even thought necessary by an English Parliament to pass an act touching the matter.[2]

With this heritage it was not surprising that the early settlers in America fiercely resisted attempts of the Governors of the Royal provinces to resort to compulsory testimony for coercing confessions.[3]

By the time of the formation of the Union, the principle that no person could be compelled to be a witness against himself had become fixed in the common law. It was regarded then as now, as a protector to the innocent as well as to the guilty, and an essential safeguard against unfounded and tyrannical prosecution.[4]

The privilege was not included in the Federal Constitution as originally adopted. Subsequently it was placed in one of the group of 10 Amendments recommended to the States by the First Congress, and by them adopted. Since then, all the States of the Union have included the privilege in their constitutions except New Jersey and Iowa where the principle prevails as part of the common law.[5]

During the development of the privilege against self-incrimination, there was experimentation with statutes granting immunity in exchange for compulsory testimony. In 1857, an act was passed by Congress granting a complete legislative pardon for any fact or act as to which the witness was required to testify.[6]

---

[1] Pittman, The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America, 21 Va. L. R. 763, 764, 770–773 (1935); Corwin, The Supreme Court's Construction of the Self-Incrimination Clause, 29 Mich. L. R. 1, 5–12 (1930); Applicability of Privilege Against Self-Incrimination to Legislative Investigations, 49 Col. L. R. 87 (1949).

[2] Pittman, Id. at 774.

[3] Id. at 787.

[4] *Twining* v. *New Jersey* (211 U. S. 78, 92 (1908)).

[5] Id. at 91.

[6] 34th Cong., 3d sess., Globe, pp. 427, 433, 445. (See Eberling, Constitutional Investigations, pp. 304–315.)

This provision of the bill was amended five years later when it was found to have worked greater evil than good.

It was a Senator from Illinois, Senator Trumbull by name, who was largely responsible for its amendment. In debate, Senator Trumbull graphically demonstrated that the act offered inducement for the worst criminals to appear before an investigating committe to obtain immunity from their crimes. As an example, he pointed to "a man who stole $2 million in bonds, if you please, out of the Interior Department. What does he do? He gets himself called as a witness before one of the investigating committees, and testifies something in relation to that matter, and then he cannot be indicted." Senator Trumbull then went on to show how the clerk who purloined $2 million in bonds from the Interior Department was discharged, and the indictment against him quashed merely because of some statement in reference to the matter before an investigating committee.

Shortly thereafter the legislative pardon was withdrawn, and an immunity statute was enacted which provided in part that "no * * * evidence obtained from a party or witness * * * shall be * * * used against him * * * in any criminal proceeding."[7] Under this statute it was merely the testimony itself which could not later be used in any criminal proceeding against the witness, but the immunity did not extend to other matters to which this testimony might indirectly lead. This partial immunity statute was soon challenged in the case of *Counselman* v. *Hitchcock*,[8] and the Supreme Court agreed that it was invalid for failing to provide the same complete protection as the constitutional privilege which the witness was required to surrender.

To meet the objection raised in the Supreme Court's decision in the *Hitchcock* case a clause was thereafter included in the act relating to proceedings before the Interstate Commerce Commission, in terms broad enough to furnish absolute immunity from prosecution in the Federal courts.[9]

Sustaining the validity of this immunity statute, the Supreme Court in *Brown* v. *Walker*[10] in the year 1896 ruled that it fully accomplished the object of the privilege, and therefore it was adequate to prevent the witness from asserting his right to claim immunity.

Thereafter, the Immunity Act relating to the Interstate Commerce Commission was incorporated in temporary wartime measures and in virtually all of the major regulatory enactments of the Federal Government.[11] To guard against unwise use of their authority, these regulatory agencies have followed the practice of consulting the Attorney General and getting his approval before granting immunity to witnesses.

From what has been said, you can readily see that there is nothing novel about immunity legislation. Indeed, many States have also enacted laws which provide immunity from prosecution where a witness is compelled to testify.

This shift from privilege to immunity statutes reflected in part the view of some attorneys and legal scholars that privilege against self-incrimination was somewhat outmoded and should be strictly limited.[12] As great a guardian of

---

[7] Eberling, id. at 320–323.

[8] 142 U. S. 547 (1892). This act of 1862 revised an old statute into two new sections by an amendment which sought to insure that a witness who testified before a Federal grand jury or court (R. S. § 860 (1875)) or a Congressional committee (R. S. § 859 (1875)) would not be later subjected to the use of his testimony in any criminal proceeding against him. Sec. 860 of the amendment dealing with grand juries and courts came under attack in *Counselman* v. *Hitchcock*, supra, and was held to be invalid. Since this part of the immunity provision failed to accomplish its purpose, Congress repealed it in 1910 (36 Stat. 352 (1910)). Congress apparently felt that sec. 859 applying to Congressional committees was still of value and left it in force to this date (R. S. § 859 (1875)), as amended 52 Stat. 943 (1938), 18 U. S. C. sec. 3486 (Supp. V, 1952); see, The Privilege Against Self-Incrimination versus Immunity: Proposed Statutes, 41 Georgetown L. J. 511, 514 (1953); *United States* v. *Bryan* (339 U. S. 323, 335–337 (1950)).

[9] It read in part as follows:

"No person shall be prosecuted * * * for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence. * * *" Act of February 11, 1893, C. 83, 27 Stat. 443, 49 U. S. C. A. § 46; see, too, *Smith* v. *United States* (337 U. S. 137, 146–147 (1949)). Note: Denying the Privilege Against Self-Incrimination to Public Officers, 64 Harv. L. R. 987, 988 (1951).

[10] 161 U. S. 591 (1896).

[11] *Shapiro* v. *United States* (335 U. S. 1, 6–7 (1948)), where various statutes are collated in the footnote. The customary provision in these statutes provides as follows: "No person shall be excused from complying with any requirements of this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, * * * shall apply with respect to any individual who specifically claims such privilege."

[12] Rapacz, Limiting the Plea of Self-Incrimination, 20 Georgtown L. J. 329, 353 (1932); see footnote 3 of *Palko* v. *Connecticut* (302 U. S. 319, 326 (1937)). Note The Privilege Against Self-Incrimination; the Doctrine of Waiver, 61 Yale L. J. 104, 110 (1952).

individual rights and liberty as Mr. Justice Cardozo observed in speaking of the privilege of immunity from compulsory self-incrimination: "This, too, might be lost, and justice still be done. Indeed today as in the past there are students of our penal system who look upon the immunity as a mischief rather than a benefit, and who would limit its scope, or destroy it altogether. No doubt there would remain the need to give protection against torture, physical or mental. * * * Justice, however, would not perish if the accused were subject to a duty to respond to orderly inquiry." [13] There are other jurists and legal commentators of distinction who feel that it would be abhorrent to principles of a free government to compel a person to testify even upon an exchange of full immunity.[14]

With this background before us, I come now to the need for exchanging immunity for compulsory testimony in light of our recent experience with Congressional investigations into subversion, crime and corruption. The history of Congressional investigatory powers, just like the privilege against self-incrimination, goes back to the earliest days of our history.[15] Unlike the privilege, however, the Constitution does not expressly provide for any Congressional power to investigate. It is considered as an implied power essential to carry out the general legislative function.[16]

Congressional investigation committees have traditionally been regarded as having these principal functions: [17] to secure information by which Congress may exercise an informed judgment in legislating wisely; and to check administrative agencies for determining whether they are properly enforcing the law and judiciously spending the public funds. For these purposes, Congressional Committees may summon witnesses and require their testimony under penalty of contempt proceedings.[18] But a Congressional hearing is not a trial. Its function is primarily to ascertain facts, and not to decide on the guilt or innocence of the witness.

In recent years many of these investigating committees have been particularly concerned in alerting the American people to the nature of subversive and other criminal activities; the many forms that these activities take; and how they threaten the democratic processes.

Some persons have been critical of these investigations, claiming that they restrict freedom of speech by stigmatizing expressions of unpopular views.[19] Freedom of speech, they say, implies freedom not to speak at all, even under legal compulsion. Since wide publicity is given to these proceedings by newspapers, radio and television, the complaint is also that these persons investigated are exposed to possible insult, ostracism and loss of employment. It is urged that mere mention of a person's name in connection with an investigation that has widespread news value may create a distorted and unfair public impression.[20] Another point made is that "proof of innocence may never catch up" with public "assertions of guilt." [21] It is also said that if these persons decline to profess any statement of belief before a committee they invite punishment for contempt.[22]

Unquestionably, every effort should be exerted to protect the right of our people to speak and think freely. As Chief Justice Hughes has well said:

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political

---

[13] *Palko* v. *Connecticut* (302 U. S. 319, 326 (1937)).

[14] See, dissents of Mr. Justices Shirns, Gray, and White in *Brown* v. *Walker*, supra (161 U. S. 630–638. Cf. dissent of Mr. Justice Black in *Rogers* v. *United States* (340 U. S. 367, 376 (1950)).

[15] Potts, Power of Legislative Bodies to Punish for Contempt, 74 U. of Pa. L. R. 691, 780 (1926); Llacos, Rights of Witnesses Before Congressional Committees, 33 Boston U. L. R. 337, 340 (1953).

[16] Llacos, id. at 341.

[17] McGeary, The Developments of Congressional Investigative Power, p. 23 (1940); *McGrain* v. *Daugherty* (273 U. S. 135 (1927)).

[18] *Sinclair* v. *United States* (279 U. S. 263 (1929)); *Marshall* v. *United States* (176 F. 2d 473 (D. C. Cir. 1949); 2 U. S. C. § 192 (Supp. 1950)).

[19] New York City Bar Association Committee on the Bill of Rights, report on congressional committees presented December 14, 1948, p. 1.

[20] Galloway, Congressional Investigations, Proposed Reforms, 18 U. of Chi. L. R. 478, 479–481 (1951).

[21] Dilliard, Congressional Investigations: The Role of the Press, 18 U. of Chi. L. R. 585, 587 (1951).

[22] Edgerton, J., dissenting in *Barsky* v. *United States* (167 F. 2d 241, 252 (D. C. Cir., 1948); cert. denied 334 U. S. 843 (1948); petition for rehearing denied 339 U. S. 971 (1951)).

discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means." [22]

We should dread the day when the people could justifiably become wary of expressing unorthodox or unpopular opinions or where rumor and gossip are accepted as substitutes for evidence.

As against these threats to our precious liberties, we must also weigh the possible harm to the public safety and welfare, without which there can be no liberty for anyone. While the rights guaranteed by the first amendment may not be curtailed, abuse of these rights may properly be curbed.[24]

In his time, Abraham Lincoln expressed the problem in these distressed words: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" [25] The same problem is with us today. Obviously, if Congress is to legislate wisely with respect to subversion, and other crime and corruption, it must not be obstructed from learning who are its leaders, organizers and members; the nature and scope of their activities; the character and number of their adherents.

I know of no constitutional right of privacy which immunizes a person from giving evidence where an inquiry is conducted by a legally constituted Congressional committee. The person owes this duty as a citizen just as he owes the duty to furnish relevant and truthful testimony in a court of law or grand jury. He violates his duty as a citizen when he suppresses the facts concerning criminal activity known to him. So long as the questions are pertinent and germane to a lawful inquiry of Congress, the individual is not relieved from answering because they delve into his private affairs, his previous utterances, or his affiliations, political or otherwise.[26] The constitutional guaranty of freedom to express one's views does not include immunity from congressional inquiry as to what one has said, subject to one's privilege against self-incrimination.

Reference to several cases within the last few years demonstrate how effectively congressional committees, courts, and grand juries have been blocked in their efforts to uncover subversion, as well as other criminal activities because of reliance by witnesses upon their privilege.

In one case the witness upon ground of privilege refused to answer questions before a grand jury as to whether she knew the names of the State officers of the Communist Party of the State, what its table of organization was; whether she was employed by it; whether she ever had possession of Communist books; and whether she turned the books over to any particular person. At the time, the Smith Act was in effect, making it a crime for any person, knowing its purposes, to be a member of any group which advocates the overthrow of the Government. Upon the refusal of the witness to testify, she was found to be in contempt of court and sentenced to imprisonment for 1 year. The court of appeals affirmed.

However, the Supreme Court felt that her answers might furnish a link in the chain of evidence necessary in a prosecution under the Smith Act, and that the witness was privileged to refuse to furnish any such link. Accordingly, it unanimously reversed upon the ground that "prior decisions of this Court have clearly established that under such circumstances, the Constitution gives a witness the privilege of remaining silent." [27]

In the same way, a Federal grand jury was prevented from obtaining information in its investigation of narcotic and white slave traffic as well as bribery, perjury, and other serious Federal violations. The witness stood upon his privilege against self-incrimination in refusing to respond to questions to what he did for a living and whether he knew certain named persons. Here again, judgment of imprisonment for contempt was upheld by the court of appeals, but reversed by the Supreme Court with one judge dissenting [28] upon the ground that any other conclusion would seriously compromise an important constitutional liberty. In this case the court held that the defendant could refuse to answer

---

[22] *De Jonge* v. *Oregon* (299 U. S. 353, 364, 365 (1937)).

[24] Id.

[25] 6 Richardson, Messages and Papers of the Presidents, p. 23, July 4, 1861.

[26] See *United States* v. *Josephson* (165 F. 2d 82 (2 Cir., 1947), cert. denied 333 U. S. 838 (1948)); *Lawson* v. *United States* (176 F. 2d 49 (D. C. Cir., 1949), cert. denied 339 U. S. 934 (1950)); *Barsky* v. *United States* (167 F. 2d 241 (D. C. Cir., 1948), cert. denied 334 U. S. 843 (1948)); *McGrain* v. *Daugherty* (273 U. S. 135 (1927)); and cf. *Rumely* v. *United States* (197 F. 2d 166 (D. C. Cir., 1952), aff'd 73 S. Ct. 543 (1953)).

[27] *Blau* v. *United States* (340 U. S. 159 (1950)).

[28] *Hoffman* v. *United States* (341 U. S. 479 (1951)). See, too, *Singleton* v. *United States* (343 U. S. 944 (1952)); note, Recent Extensions of the Witness' Privilege Against Incrimination, 53 Col. L. R. 275 (1953).

questions innocent on their face since it appeared from the climate of the investigation and the publicity given defendant's alleged criminal activity, that his answers might implicate him in some Federal crime.

In another case, a congressional committee attempted in vain to obtain information from a witness relating to the names of persons engaged in the manufacture and sale of gambling equipment and other matters. Finally, exasperated chief counsel for the committee said: "Let the record show that the witness just sits there mute, chewing gum, saying nothing."

The witness was found guilty of contempt of court and sentenced to 6 months in jail but judgment was reversed on appeal. The court of appeals declared that the methods used by the committee for examination of witnesses constituted a triple threat: "Answer truly and you have given evidence leading to your conviction for a violation of Federal law; answer falsely and you will be convicted of perjury; refuse to answer and you will be found guilty of criminal contempt and punished by fine and imprisonment."[29] In the opinion of the court, the predicament in which the witness was placed was contrary to fair play and in direct violation of the fifth amendment.

These decisions could be multiplied and undoubtedly represent prevailing law. Almost every heinous crime on the lawbooks, committeed by individuals or by groups, remains uncovered because of the privilege against self-incrimination. But it is in the area of subversion and disloyalty particularly that the privilege has a "field day." It is here that legislative committees and grand juries are held at bay for years from learning which leaders are plotting the country's destruction, merely because witnesses are relieved of giving essential information upon the ground of privilege.

It is little wonder that law-abiding citizens frequently are heard to say that subversives and other wrongdoers are unduly coddled by existing law. They express amazement that the Congress and the courts should continue to put up with subterfuge and concealment in place of truth at a time when the peril from communism is so great and when crime is so rampant. They earnestly urge upon us the vital need for modernizing the legal weapons for fighting subversion and crime.

These pleas of the people for more drastic action against subversion and other misconduct have not gone unheeded. Some States and cities provide for the dismissal of public employees who refuse to testify on grounds of self-incrimination or who refuse to waive immunity from prosecution.[30]

Some States prescribe loyalty oaths for admission to the bar which go beyond the traditional promise to uphold the State and National Constitutions.[31]

Some States and municipalities have passed statutes requiring affidavits of public employees that they are not and have never been Communists.[32] Some States make ineligible to teach in any public school a person who was a member of an organization which advocates the overthrow of the Government by force.[33] Some of these statutes have been upheld as valid by the Supreme Court,[34] including the provision of the New York State law which provides that membership by a person in an organization listed as subversive by the board of regents shall constitute prima facie evidence of disqualification for employment in the public schools.[35] This was the so-called Feinberg law aimed at protecting the school children of New York against teachers who were spreading Communist propaganda. The poisonous propaganda was sufficiently subtle to escape detection in the classroom. The New York Legislature recognized that while the schools must attract and protect the critical minds, the schools were not sanctuaries for those who were committed to follow in the footsteps of Klaus Fuchs. It sought the next best solution by excluding from teaching those affiliated with certain organizations listed by the board of regents which advocated the overthrow of the Government.

One of the main constitutional objections to the law was that it violated the first amendment by creating an atmosphere of fear which would inevitably stifle freedom of speech. The court, in an opinion by Judge Minton, formerly

---

[29] *Aluppa* v. *United States* (201 F. 2d 287, 300 (6 Cir., 1952)).
[30] Note, Mandatory Dismissal of Public Personnel and the Privilege Against Self-Incrimination, 101 U. of Pa. L. R. 1190, 1191, fn. 8 (1953).
[31] Brown & Fassett, Loyalty Tests for Admission to the Bar, 20 U. of Chi. L. R. 480, 483 (1953).
[32] *Garner* v. *Los Angeles Board* (341 U. S. 716 (1951)); *Gerende* v. *Board of Supervisors* (341 U. S. 56 (1951)); but compare *Wieman* v. *Updegraff* (344 U. S. 83 (1953)).
[33] *Adler* v. *Board of Education* (342 U. S. 485 (1951)).
[34] See footnote 32.
[35] *Adler* v. *Board of Education* (342 U. S. 485 (1951)).

of the court of appeals for this circuit, rejected the contention that the law interfered with free speech since persons "have no right to work for the State in the school system on their own terms. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere." [36]

The Supreme Court was also wholly unimpressed by the contention that the law condoned guilt by association contrary to democratic concepts of justice. On this point the Court said: "A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds toward the society in which they live. In this the State has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and duty to screen the officials, teachers, and their employees as to their fitness to maintain the integrity of the schools as a part of an ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined by the company he keeps. In the employment of officials and teachers of the school system, the State may very properly inquire into the company they keep." [37]

The Federal Government also has taken effective measures to protect the interests of national security. One long step forward in that direction was to enact legislation requiring non-Communist affidavits from trade union leaders whose unions wanted to resort to the advantages of the Taft-Hartley Act.[38] The purpose of this requirement was to prevent disruption of industry in obedience to Communist Party orders.[39] If the union leader's affidavit was false, he could be sent to jail.

The Federal Government has also tried its best to "clean its own house." On April 27, 1953, the President by Executive order established his security requirements for employment so that persons employed by the Federal Government will be reliable, trustworthy, of good character and loyal to the United States.[40] On October 13, 1953, the President amended his Executive order so as to provide that where a Government employee refuses to testify before a Congressional committee regarding charges of his disloyalty or misconduct, an agency may take this factor into consideration in determining whether the person's continued employment is inconsistent with the national security.[41] This amendment to the President's Executive order is in accord with my opinion that a Government employee who claims privilege in a congressional investigation may be too much of a risk to be retained in Federal service.

A recent Senate report entitled "Interlocking Subversion in Government" [42] fully documents how former Government employees were able to spin their web of intrigue in positions of influence. The report states:

"The subcommittee examined in public session 36 persons about whom it had substantial evidence of membership in the Communist underground in Government. All of them invoked the fifth amendment and refused to answer questions regarding Communist membership, on the grounds of self-incrimination. Many refused even to acknowledge their own signatures on official Government documents, in which they had sworn to nonmembership in the past.

"Almost all of the persons exposed by the evidence had some connection which could be documented with at least one—and generally several—other exposed persons. They used each other's names for reference on applications for Federal employment. They hired each other. They promoted each other. They raised each other's salaries. They transferred each other from bureau to bureau, from department to department, from congressional committee to congressional committee. They assigned each other to international missions. They vouched

---

[36] Id. at 492.
[37] Id. at 493.
[38] Sec. 9 (h) of the Labor Management Relations Act of 1947, 29 U. S. C. A. Supp. III, sec. 141, sec. 159 (b).
[39] *American Communications Association v. Douds* (339 U. S. 382 (1950)), sustaining the validity of sec. 9 (h) against the challenge that it violated the first amendment, ex post facto laws and other fundamental rights.
[40] Executive Order No. 10450, issued April 27, 1953 (18 F. R. 2489).
[41] Executive Order No. 10491, issued October 13, 1953 (18 F. R. 6583).
[42] Report of Senate Committee on the Judiciary, Interlocking Subversion in Government Departments, 83d Cong., 1st sess., July 30, 1953, p. 21. Being a Communist is not a crime under Federal law, although it is in some States (see Liacos, supra, note 15, at 375). The Smith Act (18 U. S. C. sec. 2385 et seq.) makes advocating or teaching the violent overthrow of any Government of the United States, or being a member of such a group, and knowing its purposes, a Federal crime.

for each other's loyalty and protected each other when exposure threatened. They often had common living quarters. * * *"

Suppression of truth in any case is bad enough. In no event can it be justified by a Government employee or applicant for Government employment in the face of a congressional inquiry where the interests of the national security are at stake. No one denies that the Government employees or applicant for such employment may constitutionally claim his privilege against self-incrimination. On the other hand, no one has a constitutional right to a Government job.[43] True, the Supreme Court has held that the "constitutional protection does extend to the public servant whose exclusion pursuant to to a statute is patently arbitrary or discriminatory."[44] But, in my opinion, there is nothing either arbitrary or discriminatory about dismissing a Federal employee where he refuses to waive the privilege against self-incrimination guaranteed him by the Constitution. We find an analogous situation presented in the recent decision of the Supreme Court in *Orloff* v. *Willoughby*.[45] In that case, the petitioner, a physician was denied a commission in the Army, principally for the reason that when asked whether he was a member in any Communist organizations he replied, "Federal constitutional privilege is claimed."[46] In its opinion through Mr. Justice Jackson, the Supreme Court said:

"It is argued that Orloff is being punished for having claimed a privilege which the Constitution guarantees. No one, at least no one on this Court which has repeatedly sustained assertion by Communists of the privilege against self-incrimination, questions or doubts Orloff's right to withhold facts about himself on this ground. No one believes he can be punished for doing so. But the question is whether he can at the same time take the position that to tell the truth about himself would incriminate him and that even so the President must appoint him to a post of honor and trust. We have no hesitation in answering that question 'No.'"

There is no law which requires the Government to sit supinely by until the suspected employee has been convicted of disloyalty or other similar misconduct inconsistent with the interests of the national security before it can separate him from the Government service. There is no law which requires the Government to assume or endure such a risk. As was pointed out in an apt case by the Supreme Court in *American Communications* v. *Douds*, speaking through the beloved late Chief Justice Vinson:

"That (first) amendment requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom. It does not require that he be permitted to be the keeper of the arsenal."

I have not overlooked the fact that the loyalty and honesty of the overwhelming majority of all Government employees is beyond question. But their good reputations and character are far better protected from unwarranted criticism when we root out the few who are unreliable and disloyal.[47]

What the critical situation of our time calls for is a law compelling testimony within the framework of the Constitution. The answer to this need is immunity legislation which will be as broad as the privilege which is supplanted.[48] Then if a person is adjudged in contempt for refusing to testify before a congressional committee, he will know that the judgment of contempt will more likely stand up on appeal free from constitutional challenge.

---

[43] See *Bailey* v. *Richardson* (182 F. 2d 46 (D. C. 1950), aff'd by an evenly divided court 341 U. S. 918 (1951)); *Washington* v. *McGrath* (182 F. 2d 375 (D. C. 1950), aff'd 341 U. S. 923 (1951)); *Orloff* v. *Willoughby* (345 U. S. 83, 91 (1953)); Mr. Justice Douglas concurring in *Anti-Fascist Committee* v. *McGrath* (341 U. S. 123, 182–183 (1951)); *United Public Workers* v. *Mitchell* (330 U. S. 75 (1947)); *Angilly* v. *United States* (199 F. 2d 642, 644 (1950)); cf. *McAuliffe* v. *New Bedford* (155 Mass. 216, 29 N. E. 517 (1892)) per Holmes, J., "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman" (Id. at 220, 29 N. E. at 517).

[44] *Wieman* v. *Updegraff* (344 U. S. 83 (1953)). The Court ruled as contrary to due process the Oklahoma loyalty oath statute forbidding public employment of persons who belonged to certain organizations, regardless of their knowledge of the character of those organizations, because of the "indiscriminate classification of innocent with knowing activity" (Id. at 91).

[45] 345 U. S. 83 (1953).

[46] Id. at 90.

[47] 339 U. S. 382, 412 (1950), sustaining the non-Communist affidavit requirement of union leaders under the Taft-Hartley Act.

[48] *Hoffman* v. *United States* (341 U. S. 479 (1951)), suggests such legislation if Congress concludes the need is great enough. See, too, comment, The Privilege Against Self-Incrimination Versus Immunity; Proposed Statutes, 41 Georgetown L. J. 511 (1953); S. Rept. 153 on S. 16, 83d Cong., 1st sess., pp. 1 and 2, April 17, 1953; report of Senate Committee on the Judiciary, Interlocking Subversion in Government Departments, July 30, 1953, 83d Cong., 1st sess., p. 50.

At the same time, the law will also provide more adequate protection for the witness.

At present the witness is in a box so to speak. The witness is not excused from answering merely because he believes his answers will incriminate him. "His say-so does not of itself establish the hazard of incrimination."[49] Where he claims his privilege, it is the function of the judge to determine whether the silence of the witness is justified or whether the danger to be apprehended is too remote to be substantial. To save himself from being held in contempt, the witness may often be compelled to disclose those very facts which he claims are privileged.[50]

Witnesses are also aided by a broad immunity statute in still another way. Under our law, unlike that of England's, disclosure of any incriminating fact constitutes a waiver of the privilege as to details concerning that fact.[51] Having made a partial disclosure of facts, the witness loses the right to cease answering interrogations and rely upon his privilege at a later point in his testimony.

In one case, the defendant freely disclosed that she was treasurer of the Communist Party in Colorado, and testified that she had given the books of the party to another person. When asked to divulge the name of the latter, she refused upon the ground that the answer might incriminate her under the Smith Act. Affirming her conviction for contempt, the Supreme Court, speaking through Chief Justice Vinson, said:

"Since the privilege against self-incrimination presupposes a real danger of legal detriment arising from the disclosure, petitioner cannot invoke the privilege where response to the specific question in issue here would not further incriminate her. Disclosure of a fact waives the privilege as to details."[52]

This decision leaves the law in a rather anomalous position for the witness. A witness who refuses to answer all questions and fails to cooperate to any extent may be protected by the claim of privilege.[53] But there is no equal protection afforded by the decisions to the witness who commences to cooperate but stops at a point where further disclosure may incriminate him.[54]

Moreover, if the witness refuses to answer on the ground that Congress has exceeded its powers or that the inquiry is lacking in pertinency, he construes the law at his peril. If mistaken, his good-faith error of law constitutes no defense to fine and imprisonment.[55]

Then again, it is claimed by some that a person's election to remain silent upon the ground of privilege does not necessarily mean he has anything sinister to hide. There are undoubtedly some people of sincere principle who refuse to disclose information to authorized investigating authorities because of their feeling that no one has any right to inquire about their beliefs even if germane to the inquiry at hand.[56] There are other persons who refuse to answer because they feel their recollections of events long past are feeble, and that falsehood even on trivial or irrelevant matters may subject them to a charge of perjury. There are still others less innocent who say that coercing them to testify under pain of contempt "resembles the Soviet tactic of requiring those guilty, not only to pay for, but also to proclaim their guilt."[57]

The use of broad immunity statutes serves to remove the dangers mentioned for the innocent, and operates as an incentive for the guilty to tell the truth.

There are already two proposals pending in Congress which seek to compel the answer by witnesses of questions put to them before congressional committees, grand juries, or courts. In exchange for this compulsory testimony, the witnesses will obtain complete immunity from prosecution.

One bill is S. 565.[58] This proposal grants immunity to witnesses before a grand jury or court of the United States when in the discretion of the Attorney General, it is necessary to do so in the public interest. In exchange for this immunity, the witness is compelled to testify and to produce his books, papers, or records. S. 565 uses broad immunity language in stating that the

---

[49] *Hoffman* v. *United States* (341 U. S. 479, 486 (1951)).
[50] Id.; *United States* v. *Weisman* (111 F. 2d 260, 262 (2 Cir., 1950)).
[51] Note, 61 Yale L. J. 105, 109 (1952).
[52] *Rogers* v. *United States* (340 U. S. 367, 375 (1951)).
[53] See e. g., *Blau* v. *United States* (340 U. S. 159 (1950)).
[54] Note, Congressional Investigations—Self-Incrimination, Condemnation, and Fair Hearing, 22 U. of Cinn. L. R. 193, 199–200 (1953).
[55] See *Townsend* v. *United States* (95 F. 2d 352, 361 (D. C. Cir. 1938), cert. denied 303 U. S. 664 (1938)).
[56] Ryse, A Report on the Pennsylvania Loyalty Act, 101 U. of Pa. L. R. 480, 481–484 (1953); Wright, "Should Teachers Testify?" Saturday Review, Sept. 26, 1953, p. 23.
[57] See Meltzer, Required Records, the McCarran Act and the Privilege Against Self-Incrimination, 19 U. of Chi. L. R. 687, 722 (1951).
[58] 83d Cong., 1st sess., 1953. Also known as the Kefauver bill.

witness shall not be prosecuted on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege, to testify or produce evidence.

In this respect, S. 565 is almost identical to the immunity provision sustained as valid by the Supreme Court as far back as 1896.[59] This bill does not extend the immunity to witness before congressional committees.

There are other bills pending, S. 16,[60] and H. R. 2737,[61] with equally broad immunity authority. The Senate has passed its bill, but the House bill still awaits action. Both these bills grant immunity to witnesses before congressional committees, but not to witnesses before grand juries or courts.

The proposed bills are worded so that the witness will not get an "immunity bath" merely by testifying. He must first raise specifically his claim for privilege, and thus put the committee on notice whether for the greater good the witness should be required to testify and given immunity, or whether he should be excused from testifying.[62]

However, the discretionary power to grant the immunity is not vested in the Attorney General but lies with the body conducting the investigation. If the proceeding is one before one of the Houses of Congress, then a majority vote of the Members present is necessary. Under S. 16, if it is a proceeding before a committee, two-thirds of the members must vote to grant the immunity. In that event the two-thirds vote must include at least 2 members of each of the 2 political parties having the largest representation on such committee. The House bill does not provide for notice to the Attorney General of the proposed grant of immunity. The Senate bill provides for 1 week's notice to the Attorney General of the proposal, but if the latter fails or refuses to assent to grant of immunity it may be conferred by majority vote of either House. It is hoped that this legislation will only be resorted to where full disclosure by witnesses is deemed of greater importance that the possibility of punishing them for past offenses. By permitting one or several criminals to escape prosecution, the larger public peril contained in a gang of criminals or in their leaders may be uncovered, and the guilty brought to justice.

The legislative proposals mentioned have much to commend them. In my opinion, these bills would better achieve their purposes if they required the concurrence of the Attorney General in the granting of any immunity to a witness by a joint congressional committee or either House committee, or by Congress. The Attorney General is the chief legal officer of the Government of the United States. As such, it is his responsibility to prosecute persons who offend the criminal laws of the United States. This responsibility must be coupled with adequate authority to permit its discharge. It would seem to be more advisable for the Attorney General who has immediate knowledge of a criminal's background and propensities to decide whether immunity should be granted for such a person. To allow the Attorney General to participate in the ultimate decision as to whether immunity should be granted would not impair congressional investigations in the fields of internal security, crime, and corruption. Nor would it discourage witnesses from providing information of importance to the investigation if the Attorney General's permission was required before immunity was granted.

On the other hand, if these bills were enacted in their present form, they might subject Members of Congress to undue pressures for granting immunity to criminals who are ineligible to receive it. Also, they could very easily cause embarrassment to Congress by impeding or blocking prosecutions planned by the Department of Justice on any matter even incidentally testified to upon these investigations.[63]

---

[59] *Brown* v. *Walker* (161 U. S. 591 (1896)).

[60] S. 16, 83d Cong., 1st sess., 1953, passed the Senate July 9, 1953, after extensive debate, Congressional Record 8646–8663, July 9, 1953. S. 16 amends sec. 3486 of title 18. See. 3486 presently furnishes witnesses immunity from prosecution for testimony before either House or their committees. It appears to suffer from the same deficiency present in a similar statute condemned in *Counselman* v. *Hitchcock* (142 U. S. 547 (1892)). S. 16 is intended to supply the omission in the Hitchcock case by providing not only that a witness' testimony may not be used against him, but that such witness shall be immune with respect to "any transaction, matter, or thing concerning which" he has been compelled to testify.

[61] 83d Cong., 1st sess., 1953.

[62] S. Rept. 153, 83d Cong., 1st sess., p. 2 (1953).

[63] See Comment, The Privilege Against Self-Incrimination Versus Immunity: Proposed Statutes, 41 Georgetown L. J. 511, 523 (1953).

The unfortunate experience which Congress had as far back as 1857 in granting immunity without concurrence of the Attorney General [64] should teach that a similar course of action may be marked by even greater failure today. The witness might readily turn this division of authority between Congress and the Department of Justice to his advantage by obtaining an immunity from the legislative committee or from Congress over the objection of the Attorney General. Thereafter he would be free to testify concerning a broad area of activities without fear that he could be held to account criminally for other violations however unrelated to the matter under investigation.

Thus, for example, a congressional committee or Congress might furnish immunity to a person to obtain his testimony about his illicit traffic in slot-machine operations between States. This person may also be guilty either of espionage or subversion or of selling narcotics to youngsters as to which an indictment is soon to be obtained. To foreclose prosecution on these more serious crimes, the witness would be glad to volunteer information on his other activities if he knew in advance that immunity would follow for all of them. Therefore, greatest care must be exercised in granting immunity, and then only upon a fully informed judgment of all the facts. The Department of Justice would, of course, through the Federal Bureau of Investigation, the Criminal and Tax Divisions, and the United States attorneys' offices, be most likely to know the facts and the plans for prosecution. Concurrence by the Attorney General in conferring the immunity would also enable the Department of Justice to maintain its responsibility for the proper administration of the criminal law.

The provision in S. 16 for 1 week's notice to the Attorney General of the proposed grant of immunity does not fully cure this bill of its weakness in failing to require his affirmative concurrence in every case. Experience indicates that at times the views of the person who is charged with prosecuting criminals are disregarded by congressional committees. For example, the successful criminal conviction obtained by the Department of Justice of the internal-revenue collector in one of the largest cities was recently nullified because of the action of a House committee in holding widely publicized hearings in the district in which the trial subsequently took place.[65] These hearings took place over the strong objection of the Department of Justice that the proposed hearing would be of prejudice to the defendant on the trial which was about to be initiated and would injure the Government's case in disclosing its evidence. In reversing the conviction, Chief Judge Magruder observed that the character of the defendant was blackened and discredited as the day of trial approached because of the publicity "invited and stimulated" by the committee over the radio and television. Thus, mere advance notification to the Attorney General of a proposed grant of immunity would never be a guaranty that the committee would be guided by the views of the Attorney General.

S. 16 and H. R. 2737 would also more readily carry out the aim of obtaining evidence against leaders of subversion and criminal enterprises, if provision for immunity were granted to obtain testimony not only before congressional committees, but likewise before courts and grand juries.

For these reasons it is my opinion that if any measure is to be enacted permitting the granting of immunity to witnesses before either House of Congress, or its committees, it should vest the Attorney General, or the Attorney General acting with the concurrence of appropriate members of Congress, with the authority to grant such immunity, and if the testimony is sought for a court or grand jury that the Attorney General alone be authorized to grant the immunity.

There remain for discussion two principal objections to this proposed legislation which may be briefly considered here. One objection is that when a witness is compelled to testify, even under the protection of immunity from criminal punishment, he is not relieved from personal disgrace which attaches to the exposure of his crime. The answer to this objection is contained in a landmark decision of the Supreme Court in *Brown* v. *Walker*: [66]

"The design of the constitutional privilege is not to aid the witness in vindicating his character, but to protect him against being compelled to furnish evidence to convict him of a criminal charge. If he secure legal immunity from prosecution, the possible impairment of his good name is a penalty which it is reasonable he should be compelled to pay for the common good."

---

[64] Supra, footnote 7.

[65] *Delaney* v. *United States* (199 F. 2d 107 (1 Cir. 1952)).

[66] 161 U. S. 591, 605, 606 (1896). Moreover, 2 U. S. C. A., sec. 193, no witness is privileged to refuse to testify upon the ground that his testimony may tend to disgrace him or otherwise render him infamous. See, too, Dodd, Self-Incrimination by Witness Before Congressional Committees, 11 Fed. R. D. 245 (1951).

The reasoning of this decision has never been questioned, and has only recently been approved by the Supreme Court.[67]

The other chief objection to the proposed legislation is that while a witness may receive immunity from Federal prosecution, he may still be subject to prosecution under State law. The Supreme Court has held that this is not a valid objection to Federal immunity laws, since the self-incrimination clause in the fifth amendment operates as a limitation on the Federal Government only. In *United States v. Murdock*[68] the defendant was indicted for refusing to answer questions of a revenue agent relating to certain income tax returns. The refusal was based on the plea that his answers might incriminate him in a State court. The court said on this point:

"This court has held that immunity against State prosecution is not essential to the validity of Federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of State power to give witnesses protection against Federal prosecution does not defeat a State immunity statute."

Similarly, a witness before a State tribunal cannot refuse to answer because of the threat of Federal prosecution.[69]

On the other hand, should Congress desire to extend to State court proceedings the immunity granted in exchange for testimony of a witness given before a congressional committee, Federal court or grand jury, it could do so without any constitutional restraint.

This view was first expressed by the Supreme Court in *Brown* v. *Walker*,[70] and only recently followed and applied in *Adams* v. *State of Maryland*.[71] In the Adams case, the defendant Adams in response to a summons appeared to testify before a Senate committee investigating crime. Answering questions he confessed to having run a gambling business in Maryland. This confession was then used by the State authorities to convict Adams of conspiring to violate Maryland's antilottery laws. Upon appeal, the Court of Appeals of Maryland rejected Adams' contention that use in the State court of his testimony before the Senate committee was forbidden by the provisions of the Federal statute.[72] This statute provides that "no testimony given by a witness in congressional inquiries shall be used as evidence in any criminal proceeding against him in any court." [73]

When the case was heard in the Supreme Court of the United States, the State of Maryland urged that the Federal statute relied on by Adams should be construed to apply to Federal courts only. This contention was overruled as was the State's argument "that Congress lacks power to bar State courts from convicting a person for crime on the basis of evidence he has given to help the national legislative bodies carry on their governmental functions".[74] With no dissent, the Supreme Court declared that the laws enacted by Congress to carry into effect its power to get such testimony was the "supreme law of the land", and State courts were bound by these laws even though their rules of practice were thereby affected.

In view of the far-reaching effect of this decision, an editorial in the Washington Post[75] has expressed the opinion that there is now greater need than ever for the concurrence of the Attorney General to grants of immunity by congressional committees under proposed statutes.

Mr. WALTER. May I ask a question?

Mr. GRAHAM. Certainly.

Mr. WALTER. I agree with your finding when you said: "The Communist movement is the advance guard of the military power of Russia."

---

[67] *Smith* v. *United States* (337 U. S. 137, 146–147 (1949)).

[68] 284 U. S. 141, 149 (1931); see also *Feldman* v. *United States* (322 U. S. 487, 491–492 (1944)); *Brown* v. *Walker* (161 U. S. 591 (1896)); *Adamson* v. *California* (332 U. S. 46 (1946)); 26 Temple L. Q. 64, 68 (1952); 8 Wigmore on Evidence 2258 (3d ed., 1940).

[69] *Jack* v. *Kansas* (199 U. S. 372 (1905)).

[70] 161 U. S. 591, 606–608.

[71] No. 271, Oct. T. 1953, March 8, 1954, 22 L. W. 4150.

[72] 18 U. S. C., No. 3486. See note 8 for the history of this section. In view of *Counselman* v. *Hitchcock* (142 U. S. 547), it was believed that R. S. sec. 859, predecessor to 18 U. S. C. sec. 3486, might some day also be held to be invalid in failing to provide immunitiy as broad as the constitutional privilege against self-incrimination.

[73] Supra, note 71, at 4151.

[74] Id.

[75] March 9, 1954.

I think you are right. Do you not agree that United States citizenship should be considered as having been forfeited on the general ground that people who are part of this conspiracy have accepted official positions under a foreign government?

Attorney General BROWNELL. Are you going back to the expatriation bill now?

Mr. WALTER. Yes.

Attorney General BROWNELL. Yes. Well, we think that that is not an overstatement of the purpose and aims of the Communist movement. At the present time we think that we need this immunity power in order to get at the heart of it.

I am confident that a number of these people who have refused to testify before congressional committees on the grounds that they might incriminate themselves are such that if we could force them to testify by giving them immunity they would be able to give us information that was quite helpful.

Mr. WALTER. Of course, when you get into that field you must bear in mind the experiences that we had right after the Civil War. You know the story as well as I do.

Attorney General BROWNELL. Yes.

Mr. WALTER. I think that is the danger. We will have somebody coming forward and testifying, bearing witness against somebody else, in order to protect himself.

You have stated:

> The greatest single source of information as to the ramifications of the Communist conspiracy is the conspirators themselves.

In line with that, I think the Committee on Un-American Activities is entitled to a little bit more credit than apparently you were willing to give them last evening, by making the people aware of what this conspiracy consists of. It may well be that the greatest source of information is the conspirators themselves. I do not know whether I would agree with that entirely.

I would say it is a great source. However, on the other hand, what about the people who were planted in the Communist organizations? They were never conspirators.

After their usefulness is gone, when they have testified in court or for other reasons their usefulness has ceased to exist, they come before the Committee on Un-American Activities and they make a statement which shocks the whole community.

Up at Albany just a few days ago we listened to a Cornell University student, who was asked to join some labor union as a part of his education, and to do a thesis. He had been in this labor union a few days when somebody in the union at a union meeting suggested that he ought to join the Communist Party. This youngster said, "I just felt that I ought to get the works," so he joined the Communist Party. When he appeared before our committee and testified I am sure that it just struck consternation into the hearts of the many people who were part of this unlawful conspiracy, people who are in the employ of the General Electric Co. today, in positions where much damage could be done in the event of trouble.

So I do not agree with this statement on the greatest single source. I think it is a great source, but I also point with pride to the record made by the Committee on Un-American Activities.

Attorney General BROWNELL. This is such a big problem that we need the aid and active assistance of all three branches of the Government and all individual citizens, too. I do not want to take credit away from any one of those groups which is working on this problem.

Mr. WALTER. I do not know that you did. I did not construe it that way.

Attorney General BROWNELL. I did not intend to, sir.

Mr. WALTER. I was more interested in your chart. I could not help but see that these topflight Communists were convicted several years ago.

Mr. GRAHAM. Mr. Brownell, may I ask a question? I will make this very brief.

A number of years ago when I was a United States attorney in Pittsburgh I had some direct contact with some of the known Communists. Several of them were perfectly willing to tell their stories, but they feared reprisal and feared their lives would be in danger.

Have you given any thought to that? Where the witness does come forward and help, what measure of protection would you give him when he seeks to aid the Government in the solving of this tremendous problem?

Attorney General BROWNELL. I have always felt it was the obligation of a prosecutor, whenever he asked the witness to take a stand which might be dangerous to his personal safety, to provide him with protection. I have seen that done very successfully in different criminal cases, as you undoubtedly have.

I think the same thing would be true here. If we were going to ask one of these persons under a promise of immunity to come forward with a story which might involve his personal safety if it were told, there would be a moral obligation there to protect him.

Mr. GRAHAM. Pardon me. Have you completed the statement?

Attorney General BROWNELL. Yes.

Mr. GRAHAM. Now are you ready for the firing line?

Attorney General BROWNELL. Yes, indeed.

Mr. GRAHAM. Mr. Hyde, you are the first man to open up.

Mr. HYDE. General, I gather from your statement that you think that these other statutes recommend, and that the strengthening of the existing statutes is preferable to outlawing the Communist Party, as such, as suggested in the Dies bill?

Attorney General BROWNELL. Well, I think that is right, if you mean by outlawing the Communist Party a bill which would make membership in the Communist Party per se a crime.

Mr. HYDE. Yes, per se a crime.

Attorney General BROWNELL. I think I would want to retain the phrase "outlawing the Communist Party" as applying to the suggestions I have made, for the suggestions would even more effectively put the Communists outside the pale then merely passing a law which would state that mere membership in the Communist Party would per se be illegal. I think they would stand up better.

Mr. HYDE. Following that further, do you not also think that there is danger in attempting to work out some definition of what the Communist Party does or advocates, and declaring that to be a crime? Do we not possibly under those circumstances run into the danger of making a criminal of someone who may have no connection with, and no thought of a conspircay or attempt to overthrow this Government,

but who may have political ideas or theories which they want to advance which are repugnant to our way of free government but which, nevertheless, we must permit to exist in the market place of thought, so to speak? Do you not think that there is danger such as that in that type of legislation?

Attorney General BROWNELL. I do.

Mr. HYDE. Thank you, General.

Mr. GRAHAM. Miss Thompson.

Miss THOMPSON. Mr. Attorney General, in connection with Mr. Walter's comments in regard to Communists in Government, I would like to ask whether or not you feel that the Government agencies have enough protection in regard to investigating employees whom they might consider to be subversive?

Attorney General BROWNELL. Enough protection—can you explain that a little bit more to me? I want to be sure I understand your question.

Miss THOMPSON. I will have to tell you the circumstances behind the question.

Over a period of 3 years I worked in the Adjutant General's Office, and was in charge of the employee-relations program. I spotted a great many people there whom I felt were subversive, and I frequently reported to my chief that such a person should be dismissed, but each time I did I would get the same answer, that we cannot afford to fire this person, you know it will cost the Government $5,000 to separate them from the service, and we cannot afford to fire them.

There were many such people in the Department at that time. I remember 1 woman who was there for a period of 3 years during the time I was there. Then I went overseas for nearly 2 years, and then I went back to my home State where I was for 2 years, and when I came back here as a Member of Congress one of the members of my staff called me and said, "I have the surprise of the age for you." I said, "What is it?" She said, "Mrs. So and So picked up her little shawl and book and bag and said she would not be back."

She had been there almost 7 years, and she had never done one tap of work, and every time I would talk to my chief and say, "Why not get rid of Mrs. So and So?", he would say, "Just leave her alone." She was in the payroll section, and she spent all of the days and years she was there doing absolutely nothing but reading magazines and books, and she came in every day, and in the spring of 1951 she separated from the Department. She had a foreign name, and a foreign brogue or accent, and everybody in the Department was very sure that she was a Communist and that she was spying on people in the Department.

There were many other people there like that, but the department was always afraid to fire them because there would be some litigation involved, and it would cost them at least $5,000 per head to separate them from the service.

We had people there who were mental cases as well, and the same situation prevailed there. We had one girl there who had been in the Department a number of months. She was a mental case and nobody would let us separate her from the service because it would cost 5,000 to fire her, and they could not afford to, and she was working for the Government. Finally, one day I inveigled her into going down to the

medical unit. She went down, and we took her purse away from her, and when we opened her purse there was a butcher knife about that long in it [indicating]. Those are situations occurring every day, and it was my definite opinion that there were a great many subversive people in that department at that time as well as other departments in the Pentagon Building, and they were kept there because the Government was afraid to separate them from the service.

Mr. WALTER. I can tell you one worse than that. An employee of the State Department purloined the correspondence I had with Chip Bohlen, and made it public at the completion of the investigation. When he was just about to be fired he was transferred to the Interior Department where my friend, Oscar Chapman, gave him a much better job than he had before he was about to be "canned."

Mr. GRAHAM. When Mr. Walter and myself were working along with other people on the so-called McCarran-Walter bill we were impressed with this thought: We knew that there were certain people who were coming to our shores who had become Communists in the old country, some of them through fear, some of them through hunger, and some of them through the feeling that their relatives were in danger in those countries. So, we put in a proviso stating that after a certain length of time a person would be, in a sense, relieved of that odium and be eligible for citizenship in this country.

This is the point I wish to make: Personally I sharply differentiate between any American in this modern day of communications of all kinds, radio, television, and everything of the kind, who accepts communism, and that type of person who comes here and who really wants to be an American citizen, but who, by reason of the force of circumstances was forced to take the position he did toward communism in the country from which he came.

Can you, in your judgment, General, so differentiate in the law and make a distinction between that type of person who comes here from abroad under the conditions I have just narrated, and an American who, in the light of modern day communications of all kinds becomes a Communist? Do you believe that possible?

Attorney General BROWNELL. I would say offhand, Mr. Chairman, that it would have to be done by leaving some discretion in the administrative officials.

Mr. GRAHAM. Personally that is my own thought, too. I think that is where it would end, but I wanted to get it in front of you for the record and for your consideration.

All right, Mr. Walter.

Mr. WALTER. Mr. Brownell, on page 4 of your statement you set forth the ability to protect ourselves from foreign agents in three fields, the ability to prevent them from coming in, the ability to deport them, and the ability to denaturalize them.

Under the code, if a person becomes a member of a Communist-front organization within 5 years after the oath of allegiance has been administered to him he may be denaturalized, and we provide in that law that he can be denaturalized only after proceedings in court. Do you think that that is the proper method of denaturalizing this disloyal person, or should it be done within the framework of the administrative process?

Attorney General BROWNELL. I would say, rather, that it ought not to be on court review.

Mr. WALTER. Well, it is not a case of review, General. It is a case of action ab initio in court.

Attorney General BROWNELL. I would prefer that to an administrative action subject to court review.

Mr. WALTER. Do you think that any great hardship is imposed on aliens who are required to remain loyal for a period of 5 years?

Attorney General BROWNELL. No, sir.

Mr. WALTER. Do you think that that creates a second-class citizen?

Attorney General BROWNELL. No, not in my book.

Mr. WALTER. That is the charge that I have heard very frequently. In debating this matter in Philadelphia some time ago a Senator, with whom you probably have come in contact, made the charge that that provision in the law created second-class citizens. Do you think it is asking very much of an alien to remain loyal to this country for 5 years?

Attorney General BROWNELL. I agree with you, Congressman Walter. I do not think that creates a second-class citizen.

Mr. WALTER. As to the deportation of those who have already entered the country, under the law if a person commits a felony within 5 years after his entry into the United States he may be deported, that is, a felony within the purview of our statute, or if he commits two felonies thereafter he may be deported. Do you think that imposes any great hardship on an alien?

Attorney General BROWNELL. I think that is a sensible provision, perhaps too lenient.

Mr. WALTER. Now we get to the third matter, the question of stopping entry into this country.

I remember the very famous experience we had when your neighbors in New York were shedding crocodile tears because a number of sailors on the *Ile de France* could not come ashore on Christmas Eve. Four hundred and seventy-three of them were not qualified, and on the next boat there were three who could not meet the qualifications.

I made a trip last year on the *Ile de France* deliberately. I talked to members of the crew in their quarters where they put on a terrific party, incidentally, in my honor.

I did not know whether I would get turpentine or arsenic in my drink. I took a chance, and as it turned out it was champagne. I think that we have effectively dealt with the problem on the seaboard.

Now we come to this question of wetbacks. What is the solution of that problem? It is not an easy one.

We in the law make provision for the issuance of search warrants. Should we have gone further on that?

Attorney General BROWNELL. I think that is our most serious problem right now as far as the Immigration Service is concerned. As I have stated before, and as I will restate to this committee shortly, during the current session of Congress, we will have some proposals which we believe will materially aid us in our efforts to stop this influx of illegal aliens over the Mexican border.

Mr. WALTER. Mr Brownell, I believe that Mexico has very stringent laws with respect to aliens coming into the country. Has the Mexican Government cooperated with us to the extent that we would be permitted to have our immigration inspectors at their seaports in order to determine who the people are that are coming into Mexico?

Attorney General BROWNELL. Not to my knowledge.

Mr. WALTER. Do you not think that might be a way to deal with this problem? I know it happened in Canada.

Attorney General BROWNELL. That may be a very timely suggestion, Mr. Walter, because there is a commission set up under the Migrant Labor Agreement, which went into effect just last month, providing for some representatives of the Mexican Government and some representatives of the United States Government to meet and work out some of these problems. We made a little progress in the commission, and the Mexican Government has agreed to what we call border recruiting, and that has resulted, since the first of January, in a drop in the number of illegal entrants over the Mexican border. We want to extend that border recruiting, and I will be very glad to ask our representative on the Commission to present the proposal which you make, which strikes me as being a very sensible one.

Mr. WALTER. Now, that brings us up to my pet theory. There are upwards of 3 million border crossers at Windsor and Detroit annually.

From the northern part of Canada there are thousands of lumbermen who come into the State of Maine. These people in the Windsor-Detroit area work in Windsor and live in Detroit, or vice versa.

Why would it not be possible, in view of the fact that there are no quotas between the United States and Mexico, to work out some way whereby potential stoop laborers who have been screened to determine their admissibility into this country, can be given cards of identification so that they can pass back and forth freely?

There is a terrific problem down there of getting stoop labor. The committee has done a lot of work in that field. If you would like to see them we have some confidential reports which have never been printed which we shall be happy to make available to you.

Attorney General BROWNELL. I should be happy to have them.

Mr. WALTER. One of them was done by a student from Syracuse University, and another by a professor from Lafayette College.

Why would it not be possible for this group working together in the field to provide a means of identification so that when Farmer X needs 500 people he knows where they are coming from, and we know who they are. They do not want to stay there. After they have done the job and collected the filthy Yankee dollars they want to go back and live in their mud huts, as that is the way they want to live. It seems to me we ought to render all the assistance we can along those lines. Then you will not have a wetback problem at all, and the people coming to the United States will not be the most undesirable ones. The mortality rates in those two counties which are adjacent to Mexico are higher than they are in any other part of the United States.

Attorney General BROWNELL. I think that would be well worth considering. There is a system of border crossing cards, but it is limited.

Mr. HYDE. I want to ask a question in connection with this refugee problem and the handling of refugees. Under both the so-called McCarran-Walter bill and the refugee bill of last year, a good many of the church people, those in the Catholic Church, and my own church, the Lutheran Church, who are actively working in that field in Europe, have complained to me that under our present law it makes it almost impossible to handle a larger percentage of these refugees because of some of the requirements of our law.

Have you given sufficient thought to it to be willing to express an opinion at this time as to whether or not there can be any relaxation there?

Attorney General BROWNELL. All I can say, Congressman, is that the primary responsibility under the new law has been given to the State Department. We have supplementary responsibility in the Department of Justice. We are set up to do our part, and have encountered no difficulties ourselves, but I think really that question should be directed to the State Department, which has primary responsibility and would be able to give you more information than I can on it.

Mr. WALTER. In view of the fact that question is raised, I want to publicly pay my respects to Mr. McLeod for the splendid manner in which he is enforcing the law.

The objection that comes from our church, the Lutheran Church, is that we have not permitted people to come in without assurances. Generally that was one of the things that brought out the most criticism of the displaced persons law, that we had an assurance that meant absolutely nothing, a blanket assurance. Under this law we have spelled out the type of assurance so that these people will not become public charges. We have 4 million and more unemployed in the United States today.

These well-meaning Lutherans and Methodists and whatever these religious organizations are thinking only in terms of the humanitarian standpoint, but they are not thinking in the broad general terms of this problem.

One of the members from Iowa the other day called my attention to a letter that he had received from the welfare people in his State complaining about the dozens of DP's and farm laborers who are now on the relief rolls, so that there are two sides to this, and I think that Mr. McLeod is doing a splendid job.

Mr. GRAHAM. I would like to join with Mr. Walter in saying that he has done a perfectly magnificent job. I have no fear now that any Communists are going to get into this country.

I told a number of photographers who are here that they would not be able to take pictures of you before the conclusion of the hearing. We have a rule here that we permit no pictures to be taken during the course of a hearing.

Attorney General BROWNELL. I am strongly in favor of it, Mr. Chairman.

Mr. GRAHAM. Mr. Keating had asked to be heard right after you concluded, but I do not see him present. We have a number of things to do over on the floor today. It is our plan for future action that the hearings will be completed in order to recess on Thursday night of this week. We will not be in session on Good Friday, and then we go over to the following week. We will resume our hearings sometime after the 26th. At that time we expect to hear the American Legion, the Veterans of Foreign Wars and other patriotic groups. If at that time you think of anything additional you would like to submit we will be only too glad to hear you.

Speaking for the committee I want to thank you, Mr. Brownell for giving us a most valuable and authoritative statement this morning. You have been very helpful.

Attorney General BROWNELL. Thank you very much, Mr. Chairman. It is always a pleasure to appear before this House committee.

(Thereupon at 11 o'clock a. m., the subcommittee adjourned subject to the call of the Chair.)

INTERNAL SECURITY LEGISLATION

WEDNESDAY, JUNE 2, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:15 a. m., in the committee room, Hon. Louis E. Graham (subcommittee chairman) presiding.

Present: Representatives Thompson of Michigan, Hyde, Celler, and Walter.

Also present: Walter M. Besterman, legislative assistant, and William P. Shattuck, assistant counsel.

Mr. GRAHAM. The committee will come to order.

As a preliminary, I would like to say that the following bills have been introduced since the last meeting and referred to this subcommittee: H. R. 8912, H. R. 8948, H. J. Res. 527, 528, H. R. 8749, H. R. 9021, and H. R. 9023.

The text of these bills will be made a part of these proceedings and witnesses appearing before the subcommittee may make reference to them in their presentations.

(The bills referred to are as follows:)

[H. R. 8749, 83d Cong., 2d sess.]

A BILL To amend sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code, relating to sabotage

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2151 of title 18, United States Code, is amended to read as follows:

"§ 2151. Definitions

"As used in this chapter:

"The words 'war material' include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

"The words 'war premises' include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

"The words 'war utilities' include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings,

whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

"The words 'associate nation' mean any nation at war with any nation with which the United States is at war.

"The words 'national-defense material' include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

"The words 'national-defense premises' include all building, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

"The words 'national-defense utilities' include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and building, whereby or in connection with which air, water, or gas may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States."

SEC. 2. Section 2153 of title 18, United States Code, is amended to read as follows:

"§ 2153. Destruction of raw material, war premises, or war utilities

"(a) Whoever when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

SEC. 3. Section 2154 of said title is amended to read as follows:

"§ 2154. Production of defective war material, war premises, or war utilities

"(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective

manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

SEC. 4. Section 2155 of said title is amended to read as follows:

"§2155. Destruction of national-defense material, national-defense premises or national-defense utilities

"(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injure, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

SEC. 5. Section 2156 of said title is amended to read as follows:

"§2156. Production of defective national-defense material, national-defense premises or national-defense utilities

"(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

SEC. 6. The analysis immediately preceding section 2151, of said title is amended to read as follows:

"Sec.
2151. Definitions.
2152. Fortifications, harbor defenses or defensive sea areas.
2153. Destruction of war material, war premises or war utilities.
2154. Production of defective war material, war premises or war utilities.
2155. Destruction of national-defense material, national-defense premises or national-defense utilities.
2156. Production of defective national-defense material, national-defense premises or national-defense utilities."

[H. R. 8912, 83d Cong., 2d sess.]

A BILL Declaring the Communist Party and similar revolutionary organizations illegal; making membership in, or participation in the revolutionary activity of, the Communist Party or any other organization furthering the revolutionary conspiracy by force and violence a criminal offense; and providing penalties

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon evidence which has been presented and proof which has been established before the Congress of the United States and the courts of the United States there exists an international revolutionary Communist conspiracy which is committed to the overthrow by force and violence of the Government of the United States and of the several States, such conspiracy including the Communist Party of the United States, its various components of affiliated, subsidiary, and frontal organizations and the members thereof.

SEC. 2. The Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations and all other organizations, no matter under what name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District,

or possession thereof, or the government of any political subdivision therein by force and violence, are hereby declared illegal and not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party, its various components of affiliated, subsidiary, and frontal organizations and other organizations with the same revolutionary purposes, by reason of the laws of the United States or any political subdivision thereof, are hereby terminated.

SEC. 3. Whoever, therefore, being a member of the Communist Party of the United States or any affiliated, subsidiary, or frontal organization thereof, or any other organization, no matter how named, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force or violence, knowing the revolutionary object or purpose thereof; or whoever participates in the revolutionary activities of the Communist Party or any affiliated subsidiary or frontal organization thereof, or any other organization with the same revolutionary purpose, knowing the revolutionary object or purpose thereof, is guilty of a Federal offense, and, upon conviction thereof, shall be sentenced to imprisonment for not exceeding ten years or fined not exceeding $10,000, or both.

SEC. 4. In determining membership or participation in the Communist Party or any other organization defined in this Act, the jury, under instructions from the court, shall consider evidence, if presented, as to whether the accused person:

(1) Has been listed to his knowledge as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

(2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;

(3) Has made himself subject to the discipline of the organization in any form whatsoever;

(4) Has executed orders, plans, or directives of any kind of the organization;

(5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;

(6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;

(7) Has been accepted to his knowledge as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;

(8) Has written, spoken or in any other way communicated by signal, semaphore, sign, or in any other form of communication orders, directives, or plans of the organization;

(9) Has prepared documents, pamphlets, leaflets, books, or any other type of publication in behalf of the objectives and purposes of the organization;

(10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others material or propaganda of any kind in behalf of the organization;

(11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to any one else in behalf of the objectives of the organization;

(12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;

(13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;

(14) The enumeration of the above subjects of evidence on membership or participation in the Communist Party or any other organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

(15) In every instance where the word "organization" is used in this section, it shall include the Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations.

SEC. 5. This Act shall take effect upon the expiration of thirty days after the date of its enactment.

[H. R. 8948, 83d Cong., 2d sess.]

A BILL To outlaw the Communist Party and similar organizations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever knowingly and wilfully becomes or remains a member of the Communist Party, or of any other organization having for one of its purposes or aims the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. For the purposes of this section, the term "Communist Party" means the political organization now known as the Communist Party of the United States of America, whether or not any change is hereafter made in such name.

SEC. 2. This Act shall take effect on the first day of the third calendar month following the month in which it is enacted.

[H. R. 9021, 83d Cong., 2d sess.]

A BILL To amend section 794 of title 18, United States Code, relating to espionage

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 794 of title 18, United States Code, is amended to read as follows:

"(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

"(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

"(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy."

[H. R. 9023, 83d Cong., 2d sess.]

A BILL To require the registration of certain persons who have knowledge of or have received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 20 of the Internal Security Act of 1950 is hereby amended by repealing subsection (a) thereof, and by deleting the designation "(b)" which appears in said section.

SEC. 2. Except as hereinafter provided, every person who has knowledge of, or has received instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, shall register with the Attorney General.

SEC. 3. The registration of any person, as required by this Act, shall be accomplished by filing with the Attorney General a registration statement in duplicate, under oath, to be prepared and filed in such manner and form, and

containing such information as the Attorney General, having due regard for the national security and the public interest, shall by regulations prescribe.

SEC. 4. The registration requirements of section 2 shall not apply to any person—

(a) who has obtained knowledge of or received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party by reason of civilian, military, or police service or employment with the United States Government, the governments of the several States, their political subdivisions, the District of Columbia, the Territories, or the Canal Zone; or

(b) who has obtained such knowledge solely by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party; or

(c) who has made full disclosure of such knowledge, instruction, or assignment to officials within an agency of the United States Government having responsibilities in the field of intelligence, which disclosure has been made a matter of record in the files of such agency, and concerning whom a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security; or

(d) whose knowledge of, or receipt of instruction or assignment in, the espionage, counteresplonage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, is a matter of record in the files of an agency of the United States Government having responsibilities in the field of intelligence and concerning whom a written determination is made by the Attorney General or the Director of Central Intelligence, based on all information available, that registration would not be in the interest of national security; or

(e) who is a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer, and any member of the immediate family of such officer who resides with him; or

(f) who is an official of a foreign government, if such government is recognized by the United States, whose name and status and the character of whose duties as such official are of record in the Department of State, and while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official, and any member of the immediate family of such official who resides with him; or

(g) who is a member of the staff of or employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, and whose name and status and the character of whose duties as such member or employee are a matter of record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee; or

(h) who is an officially acknowledged and sponsored representative of a foreign government and is in the United States on an official mission for the purpose of conferring or otherwise cooperating with the United States intelligence or security personnel; or

(i) who is a member of a force of a NATO country who enters the United States under the provisions of article III, paragraph (1) of the Agreement Regarding Status of Forces of Parties of the North Atlantic Treaty, or who is a civilian or one of the military personnel of a foreign armed service who has been invited to the United States for training purposes at the request of a military department of the United States; or

(j) who is a person who has been designated by a foreign government to serve as its representative in or to an international organization or is an officer or employee of such an organization or who is a member of the immediate family of, and resides with, such a representative, officer or employee.

SEC. 5. The Attorney General shall retain in permanent form one copy of all registration statements filed under this Act. They shall be public records and open to public examination and inspection at such reasonable hours and under

such regulations as the Attorney General may prescribe, except that the Attorney General, having due regard for the national security and public interest, may, in his discretion, withdraw any registration statement from public examination and inspection.

SEC. 6. The Attorney General may at any time, make, prescribe, amend, and rescind such rules, regulations and forms as he may deem necessary to carry out the provisions of this Act.

SEC. 7. (a) Any person who wilfully violates any provision of this Act or any regulation thereunder, or who in any registration statement wilfully makes a false statement of a material fact or wilfully omits any material fact, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(b) Any alien who shall be convicted of a violation of any provision of this Act or any regulation thereunder shall be subject to deportation in the manner provided by chapter 5, title II, of the Immigration and Nationality Act (66 Stat. 163).

SEC. 8. Failure to file a registration statement as required by this Act shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

SEC. 9. Compliance with the registration provisions of this Act shall not relieve any person from compliance with any other applicable registration statute.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

[H. J. Res. 527, 83d Cong., 2d sess.]

JOINT RESOLUTION To provide for the protection of defense facilities

Whereas the history of modern warfare has established that the defense of any country is greatly dependent upon the effective and continued operation of its industrial economy and the full utilization of its productive capabilities. In time of war or of preparation for defense from attack by a potential aggressor, injury to the industrial economy or impairment of the productive capabilities of a country may severely curtail its military effectiveness, and such injury or impairment has become a major objective of aggressor nations in their preparation for and prosecution of war; and

Whereas there exists in the United States a limited number of individuals as to whom there is reasonable ground to believe they may engage in sabotage of the industrial economy and productive capabilities of the United States, espionage, or other subversive acts in order to weaken the power and ability of the United States to cope with actual or threatened war, invasion, insurrection, subversive activity, disturbance, or threatened disturbance of international relations; and

Whereas in such circumstances it is essential that, without impairing the rights or privileges of the great bulk of loyal United States citizens, such individuals be barred from access to facilities, injury to which would be harmful to the industrial economy and productive capabilities of the United States, and, therefore, to its military effectiveness: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) whenever the President finds by proclamation or Executive order that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbance or threatened disturbance of the international relations of the United States, he may institute such measures and issue such rules and regulations as may be necessary to bar from access to any defense facility individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts. The President may perform any function vested in him by this Act through or with the aid of such officers or agencies as he designates.

(b) Except as provided in subsection (c) of this section, no measure instituted, or rule or regulation issued, pursuant to subsection (a) of this section shall operate to deprive any individual of access to any defense facility unless such individual has been notified of the charges against him and given an adequate opportunity to defend himself against the charges. Such charges shall be suf-

ficiently specific to permit the individual to respond to them, and such opportunity shall, if the individual so desires, include a hearing. The Administrative Procedure Act is not applicable to proceedings under this Act. Nothing contained in this Act shall be deemed to require any investigatory organization of the United States Government to disclose its informants or other information which in its judgment would endanger its investigatory activity. If such information is not disclosed the individual charged shall be furnished with a fair summary of the information in support of the charges against him.

(c) The measures instituted, or rules or regulations issued, pursuant to subsection (a) hereof may operate to bar summarily any individual from access to any defense facility if he has been notified in writing of the charges against him within fifteen days from the time he is so barred and given an adequate opportunity to defend himself against such charges, including, if he so requests, a hearing within thirty days of the date of such request. Reasonable continuances may, however, be permitted if consistent with expeditious disposition of the matter. A determination shall be made and transmitted to the individual affected within thirty days from the date of the termination of the hearing or, if no hearing is requested, of the submission of the individual's defense to the charges, and if administrative proceedings are provided by the rules or regulations for review of any such determination they shall be promptly determined. In the event that the summary bar against such individual is removed as a result of any proceeding, the individual shall be compensated by the United States solely for his loss of earnings in or in connection with any defense facility during the period he was so barred.

(d) As used in this Act the term "defense facility" has the same meaning as it has in title I of the Internal Security Act of 1950, as amended, but shall not include vessels, piers, or waterfront facilities.

SEC. 2. Whoever wilfully violates any rule, regulation, or order issued pursuant to the provisions of this Act, or knowingly obstructs or interferes with the exercise of any power conferred by this Act shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

SEC. 3. Nothing in this Act shall be construed to deprive any individual of any rights or benefits conferred upon him by the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947.

[H. J. Res. 528, 83d Cong., 2d sess.]

JOINT RESOLUTION To provide for the dissolution of Communist-infiltrated organizations

Whereas the Congress hereby adopts and reaffirms the findings contained in section 2 of the Subversive Activities Control Act of 1950; and in addition, it hereby finds—

(1) Communist-action organizations or their members have infiltrated into positions of influence or come into control of organizations which have been established for legal and legitimate purposes and are in a position to affect national defense or security, and such influence or control may be used in aid of the objectives of the World Communist movement; and

(2) such infiltration or control presents a clear and present danger to the national defense and security of the United States and makes it necessary that the Congress enact appropriate legislation to eradicate such danger: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That any term referred to in this Act which is defined in section 3 of the Subversive Activities Control Act shall have the meaning assigned to it by that section. For the purposes of this Act the term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action or Communist-front organization) which (A) is substantially directed, dominated, or controlled by a Communist-action organization or by a member or members thereof, and (B) is in a position to affect adversely the national defense or security of the United States.

SEC. 2. (a) Whenever the Attorney General has reason to believe that any organization is a Communist-infiltrated organization he shall file with the Board and serve upon such organization a petition for an order determining such organization to be a Communist-infiltrated organization and requiring it to take appropriate action to liquidate and to wind up its affairs expeditiously. Each such petition shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

(h) Upon the filing of any petition pursuant to subsection (a) of this section, the Board (or any member thereof or any examiner designated thereby) may hold hearings, administer oaths and affirmations, may examine witnesses and receive evidence at any place in the United States, and may require by subpena the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed relevant to the matter under inquiry. Subpenas may be signed and issued by any member of the Board or any duly authorized examiner. Subpenas shall be issued on behalf of the organization or the individual who is a party to the proceeding upon request and upon a statement or showing of general relevance and reasonable scope of the evidence sought. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. Witnesses summoned shall be paid the same fees and mileage paid witnesses in the district courts of the United States. In case of disobedience to a subpena, the Board may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear (and to produce documentary evidence if so ordered) and give evidence relating to the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. No person shall be held liable in any action in any court, State or Federal, for any damages resulting from (1) his production of any documentary evidence in any proceeding before the Board if he is required, by a subpena issued under this subsection, to produce the evidence; or (2) any statement under oath he makes in answer to a question he is asked while testifying before the Board in response to a subpena issued under this subsection, if the statement is pertinent to the question.

(c) (1) All hearings conducted under this section shall be public. Each party to such proceeding shall have the right to present its case with the assistance of counsel, to offer oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. An accurate stenographic record shall be taken of the testimony of each witness, and a transcript of such testimony shall be filed in the office of the Board.

(2) Where an organization declines or fails to appear at a hearing accorded to such organization by the Board pursuant to this section, the Board may, without further proceedings and without the introduction of any evidence, enter an order directing, with such specificity or detail as the Board may deem appropriate, such organization and any of its component parts to take the necessary steps to dissolve, liquidate, and wind up its affairs expeditiously. It shall thereafter retain jurisdiction over the matter and have authority to issue such further orders as it may determine to be appropriate under subsection (c) of section 5. Where in the course of any hearing before the Board or any examiner thereof a party, counsel or other individual is guilty of misbehavior which obstructs the hearing, such party or counsel may be excluded from further participation in the hearing.

(d) In determining whether any organization is a Communist-infiltrated organization, the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, or are members of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act;

(2) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act;

(3) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act; and

(4) the extent to which it is in a position to impair the effective mobilization or use of economic resources or manpower in connection with the defense or security of the United States.

SEC. 3. (a) If, after hearing upon a petition filed under subsection (a) of section 2 of this Act, the Board determines that the evidence adduced at the hearing does not establish that an organization is a Communist-infiltrated organization, it shall make a report in writing in which it shall state its findings as to the facts and issue and cause to be served upon the Attorney General an order denying such petition.

(b) If, after a hearing upon a petition filed under subsection (a) of section 2 of this Act, the Board determines that an organization is a Communist-infiltrated organization, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order directing, with such specificity or detail as the Board may deem appropriate, such organization and any of its component parts to take the necessary steps to dissolve and liquidate its affairs expeditiously.

(c) The Board, after issuing an order pursuant to subsection (b) of this section or pursuant to paragraph 2 of subsection (c) of section 2 shall retain jurisdiction over the matter to issue, on petition of the Attorney General or on its own motion, such further detailed and specific orders as it may determine to be appropriate to effectuate the expeditious dissolution and liquidation of the affairs of such organization and its component parts. Such order or orders of the Board may, without limitation by reason of this enumeration, (1) prohibit any specified individual or individuals from acting as an officer or representative of such organization or of any of its component parts, or exercising, directly or indirectly, any of the ordinary and usual functions of an officer or representative of such organization or any of its component parts, or exercising any substantial administrative or policymaking functions with respect thereto, and (2) approve the individuals who shall exercise functions and duties in connection with the dissolution and liquidation of the organization and its component parts. No such further order shall be issued, however, if an order has been issued under subsection (b) of this section and such order shall not have become final: *Provided*, That, after the issuance of such an order by the Board under subsection (b) of this section and before such order shall have become final, the Board shall have authority to issue such order or orders as it may determine to be appropriate prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policymaking functions, as provided above: *Provided further*, That no such order shall prohibit any individual from acting for such organization in proceedings before the Board or for judicial review or enforcement of orders of the Board until the order issued under subsection (b) of this section shall have become final; and (3) determine any issue relating to compliance by any individual or organization with the term of its orders.

(d) In exercising its powers under subsections (b) and (c) of this section, the Board shall take into consideration, and, to the extent it determines it to be consistent with the purposes of this Act, preserve the legitimate rights and interests of the members, stockholders, or other participants in such organization, or of persons represented by such organization; nor shall any order under this Act have the effect of changing or terminating any collective bargaining agreement except as expressly provided herein or require that any change be made in the wages, hours, or other terms and conditions of employment established thereby.

(e) No organization against which the Attorney General has instituted proceedings under this Act, shall be deprived of any benefits or rights to which it would otherwise be entitled under the National Labor Relations Act unless there is in effect a final order of the Board determining it to be a Communist-infiltrated organization. After such order shall have become final, the National Labor Relations Board shall not make any investigation of any question affecting commerce concerning the representation of employees under subsection (c) of section 9 of that Act, or consider a charge or issue a complaint under subsection (b) of section 10 of that Act, raised, made, or requested by such organization. The provisions of that Act relating to unfair labor practices shall continue in full force and effect with respect to members of any organization determined to be a Communist-infiltrated organization by final order of the Board except that (1) the provisions of any contract requiring membership in such organization as a condition of employment shall be without legal force or effect, and (2) no employer shall be required to bargain collectively with such

organization. Nor shall it be an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment, or any term or condition of employment against any employee who attempts in any manner to compel recognition of such organization for collective bargaining purposes.

(f) Any provision of any charter, bylaws, constitution, articles of incorporation, or similar body of governing rules of any organization which requires, as a condition of membership or participation in such organization, or of the receipt of rights or benefits, that such members or participants refrain from becoming members or participants of any other legitimate organization shall be without legal force or effect after any order of the Board determining such organization to be a Communist-infiltrated organization has become final.

SEC. 4. (a) The party aggrieved by any order entered by the Board under subsection (a) or subsection (b) of section 3 may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the entire record in the proceeding, including all evidence taken and the report and order of the Board. Thereupon the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by substantial evidence shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration. If the court shall set aside an order issued under subsection (b) of section 3 it may enter a judgment relieving the organization and any individual from complying with any orders issued by the Board under that section. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in title 28, United States Code, section 1254.

(b) Any order of the Board issued under subsection (a) or subsection (b) of section 5 shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time;

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by a United States Court of Appeals, and no petition for certiorari has been duly filed;

(3) upon the denial of a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by a United States Court of Appeals; or

(4) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Board be affirmed or the petition for review dismissed.

Any other order of the Board shall become final as of the date specified by the Board in such order.

(c) The Attorney General, on behalf of the Board, may petition any United States district court within the district in which any individual who, or organization which, has failed to comply with a final order of the Board resides or transacts business, for the enforcement of such order.

(1) With any petition for the enforcement of an order issued under paragraph 2 of subsection (c) of section 2 or under subsection (b) of section 3, there shall be filed with the court a copy of such order, with a showing that such order has become final, and the court shall cause notice of such filing to be served on the person or organization alleged to have failed to comply with such order. The court shall thereupon have jurisdiction to determine that such order is a final order and whether the person or organization has failed to comply therewith;

but the validity of the findings of the Board, or the authority of the Board to issue such order shall not be in issue in such proceedings. The court, upon determining that such order is final, and that the individual or organization has failed to comply therewith, shall have power to enforce obedience to such order by injunction or other proper process, temporary or final, mandatory or otherwise.

(2) With any petition for the enforcement of any order of the Board issued under subsection (c) of section 3, there shall be filed with the court a transcript of the record in the proceedings relating to the issuance of such order, including the pleadings and testimony upon which such order was entered, and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served on the individual or organization alleged to have failed to comply with such order, and thereupon shall have jurisdiction of the proceeding and of the questions determined therein and shall have power (A) upon determining that the Board was authorized under this Act to issue such order and that the individual or organization has failed to comply therewith, to enforce obedience to such order by injunction or other proper process, temporary or final, mandatory or otherwise, (B) to make and enter a decree modifying such order and enforcing it as so modified, or (C) setting aside such order in whole or in part. No objection that has not been urged before the Board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts (other than whether the individual or organization has failed to comply with the order) if supported by substantial evidence shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board (or any member thereof or examiner designated thereby) and to be made a part of the transcript. The Board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings as to the facts (other than whether the individual or organization has failed to comply with the order) if supported by substantial evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Except as provided in subsection (a) of this section, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States Court of Appeals and by the Supreme Court of the United States upon writ of certiorari or certification as provided in title 28, United States Code, section 1254.

SEC. 5. Nothing in this Act shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or conduct of of proceedings by the Board under this Act; except, that the provisions for the review and enforcement of orders of the Board contained in this Act shall be exclusive.

SEC. 6. The Board may make such rules and regulations, not inconsistent with the provisions of this Act, as may be necessary for the performance of its duties or for the enforcement of this Act.

SEC. 7. Subsection (h) of section 9 of the National Labor Relations Act is hereby repealed. Paragraph 3 of subsection (a) of section 8 of the said Act, as amended, is further amended by deleting therefrom "section 9 (f), (g), (h)," and inserting instead, "section 9 (f) and (g)."

SEC. 8. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this Act or the application of such provisions to other persons or circumstances, shall not be affected thereby.

Mr. GRAHAM. We are now ready to hear the witnesses. The first witness is Mr. Omar B. Ketchum, director of national legislative service, the Veterans of Foreign Wars of the United States.

STATEMENT OF OMAR B. KETCHUM, DIRECTOR OF NATIONAL LEGISLATIVE SERVICE, THE VETERANS OF FOREIGN WARS OF THE UNITED STATES, ACCOMPANIED BY A. M. DOWNER, LEGISLATIVE REPRESENTATIVE, THE VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. KETCHUM. Mr. Chairman and member of Subcommittee No. 1 of the House Committee on the Judiciary:

This morning we are very grateful to the committee for arranging this hearing in order that the Veterans of Foreign Wars might be able to present our views concerning legislation to outlaw the Communist Party. We are grateful that this could be arranged at the time that our commander in chief was here in Washington. I think you can appreciate that he travels rather extensively with long-range commitments, and it is not always possible for him to be here on a moment's notice, and we are very proud that he could be here this morning to make the formal statement for the Veterans of Foreign Wars.

I would like to say that our commander was a fighter pilot in World War II and is an outstanding young businessman of Arkansas City, Kans. Outlawing the Communist Party is very close to his heart, and he has traveled the length and breadth of this land steaming up enthusiasm concerning this objective. Not only that, but the various State units of our organization have been circulating petitions and getting thousands upon thousands of signatures in support of legislation of this character. As a matter of fact, Mr. Chairman, we have a box of them here this morning coming from various States.

Mr. GRAHAM. I think I have one, too.

Mr. KETCHUM. I do not know if the committee wants to receive them, but we have them here as evidence and if the committee does not want to receive them we will attempt to distribute them to the Members of Congress from whose districts they come.

Mr. GRAHAM. Do you wish to submit them to the committee?

Mr. KETCHUM. Probably the most effective thing to do would be to give them to the various Members from whose district they come, because the committee will need some help to pass this legislation.

There is another member of our staff here this morning, my assistant, Mr. Downer, a distinguished attorney who has had much to do with the preparation of our recommendations on the legislation at hand.

At this time I should like to present the commander in chief of the Veterans of Foreign Wars, Mr. Wayne E. Richards.

Mr. GRAHAM. Mr. Richards, we are glad to welcome you here and will be glad to hear your testimony.

STATEMENT OF WAYNE E. RICHARDS, COMMANDER IN CHIEF, THE VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. RICHARDS. Mr. Chairman and members of the committee, the Veterans of Foreign Wars is an organization of 1¼ million men who have served in the Armed Forces of the United States on foreign soil or hostile waters during time of war or a recognized campaign or

expedition. Every war, campaign, or expedition in which the United States has engaged since and including the Spanish-American War is represented in our membership. I mention this to show that our organization is a composite of opinion of those who have actively opposed the external enemies of the United States in every instance of armed conflict in the past 56 years. I believe this experience has given our membership an acute awareness of the realities of a hostile world which exceeds that of persons who have not shared these experiences.

At our national encampment in El Paso, Tex., in 1926, we denounced the Communist Party as a conspiracy to destroy the United States. We have adopted similar resolutions at succeeding encampments since that time. The delegates to our 54th National Encampment held in Milwaukee, Wis., August 2–7, 1953, unanimously adopted resolution No. 431, which is the most recent expression of our organization on this subject. The resolution reads as follows:

Whereas world strife, tensions, armament programs, and sacrifice of American lives and treasure are due to the determined and persistent plan and campaign for world domination of the Communist Party which has its headquarters in the Kremlin in Soviet Russia; and

Whereas Communist parties in other countries, including the United States of America, are subservient to the ambitions and plans of the Communist headquarters in the Kremlin; and

Whereas the Communist Party in the United States has been labeled by the courts and committees of the Congress and by self-admission of American Communist leaders to have as its purpose the overthrow of the republican form of government and the Constitution of the United States; and

Whereas there is documented evidence from American Communists and former Communists that what the Communist Party in the United States fears most is to be outlawed by legislation to the extent that it cannot operate openly: Now, therefore, be it

Resolved by the 54th National Encampment of the Veterans of Foreign Wars of the United States, That we go on record reaffirming our advocacy of legislation outlawing the Communist Party in the United States and to make it a felony to belong to the Communist Party or any group by any other name which engages in subversive activities with the intent to overthrow the Constitution of the United States and the American Republic.

As the spokesman for the Veterans of Foreign Wars, I should like briefly to discuss the views of our organization. I shall not attempt to go into detail as to the activities, nature, and purposes of the Communist Party, since it is a matter of common knowledge and since the comprehensive statement of Judge Musmano seems to have covered that field. I shall direct my remarks more to an analysis of the problem before us and hope it will contribute something to the deliberations of the committee.

A good place to begin is with a statement of the basic question. Reduced to its simplest terms I believe the question might be stated as follows: Should the Communist Party of the United States be made unlawful and membership therein be made a crime?

Mr. GRAHAM. May I interrupt a moment? Would you prefer to read your statement in its entirety before the questioning?

Mr. RICHARDS. As you wish.

Mr. WALTER. I should like to ask a question at this point, if I may.

Mr. GRAHAM. Mr. Walter.

Mr. WALTER. Did not the Smith Act do just what the Dies bill would do? I call your attention to section 2 (a) (3) of the Smith Act, which provides that it shall be unlawful for any person "to be or become a member of, or affiliate with, any such society," referring,

of course, to the Communist Party. I am not so certain that this thing you are talking about now has not already been accomplished. It is just a question now of whether the Attorney General sees fit to proceed against the estimated number of 25,000 members of the Communist Party today.

Mr. RICHARDS. You are ahead of where I am in the statement now, are you not?

Mr. WALTER. I know what you are talking about, because I read your statement.

Mr. DOWNER. Mr. Walter, I think that under the Smith Act it is necessary to prove the revolutionary object and purpose of the party in each and every prosecution brought under the act, while it is our view that under the Dies bill there is a conclusive legislative finding of revolutionary object and purpose which precludes the necessity of making such proof in prosecutions under the Dies bill.

Mr. WALTER. Perhaps you are correct, but then do we not get squarely up to this proposition, that the members of this conspiracy will immediately change the name of their organization and then, of course, having defined the Communist Party and not this new group, you will be confronted with the same situation that exists under the Smith Act. If they are parading under the banner of the XYZ party, you will be compelled to prove the object and purpose, among other things, of overthrowing the Government of the United States.

Mr. DOWNER. I think the matters you have in mind are discussed in the statement as it proceeds.

Mr. KETCHUM. I think we might make this point clear. It would be impossible for us to discuss in detail all the various bills pending before the committee. We had to decide on one to bring out our points. It is our belief that when all the hearings are concluded, probably this subcommittee will draft a bill of its own incorporating, perhaps, the best points in the bills pending.

Mr. WALTER. You chose the Dies bill, containing the fallacies, as I see it, that I have expressed, as the medium to bring this matter to the attention of the committee, and that is why I raised this question.

Mr. CELLER. Mr. Chairman.

Mr. GRAHAM. Mr. Celler.

Mr. CELLER. Also, Mr. Chairman, I hope the commander of the Veterans of Foreign Wars will tell us in what way section 3 of the Dies bill differs from the provisions of the Smith Act referred to by Mr. Walter. They both seem to be exactly the same, namely, providing penalties for anybody who seeks to teach, advocate, or encourage the overthrow of the Government of the United States by force or violence, and the provision referred to is almost exactly the same as section 3 of the Dies bill.

Mr. GRAHAM. May I suggest that we allow Mr. Richards to complete his statement and then we will proceed with the questioning.

Mr. RICHARDS. In consideration of the question we start with this premise: The Communist Party of the United States is part of an international conspiracy, subservient to and directed by Soviet Russia, which seeks world domination and violent destruction of the republican form of government of the United States. The above premise, with some variation in wording, has, in substance, been approved by

the legislative, executive, and judicial branches of our Government. It has been conclusively established and is universally recognized by all except a small minority who have been duped by the false pretensions of the Communists.

The Communist movement was accurately described by the Attorney General of the United States in recent testimony before the committee as "the advance guard of the military power of Russia." Since there is such universal agreement as to the revolutionary objects and purposes of the Communist Party it seems strange there should be such disagreement as to what should be done about it. In our analysis of the problem we decided that the premise permits only one conclusion. We decided it necessarily follows in the orderly process of logical reasoning that the Communist Party of the United States should be made unlawful and membership therein should be made a crime. Otherwise we lend a certain of aura of respectability, a certain color of acceptability, to a philosophy and course of violent conduct we totally and universally denounce. To us this is an absurd contradiction for it is a partial tolerance of something we totally reject.

We must not compromise with principle. To advocate that the Communist Party of the United States has some rights or that an individual has a right to be a Communist, in our concept of the freedom and dignity of man, is a direct violation of the natural law of self-preservation. We must exterminate communism or be exterminated by it and the recognition of that fact makes the choice an easy one.

I believe the foregoing accurately and concisely presents our analysis of the basic question. No good purpose would be served by elaborating on this phase of the problem, so we shall move on to the consideration of other questions. However, to be sure we are not misunderstood, I want to first say that we stand second to none in our opposition to and hatred of communism. We recognize that the distressing problems which plague our daily lives both from the standpoint of economic security and physical safety of the Nation are willfully and maliciously thrust upon us by the Communists.

The perplexing problems arise in the manner of giving effect to the withdrawal of all legal recognition of the party and its members. The bills before you take different approaches and in our analysis we shall direct our discussion primarily to H. R. 7894, by Mr. Dies. Other bills pending before the committee are meritorious. H. R. 7980, by a distinguished minority member of the committee, is drafted on an interesting and entirely different theory. Our discussion is built around H. R. 7894 as we believe it is best suited to an analysis of the problem. It is noted that section 3 of this bill makes party membership, per se, a crime if the member has knowledge of the revolutionary object and purpose of the party.

Mr. WALTER. May I interrupt at this point? That is exactly what has been disturbing all of us. That has to be established through fact. Wherein does that differ from the establishment of the revolutionary character of the movement under the provision of the Smith Act?

Mr. KETCHUM. We try to point that out, Mr. Walter, a little later.

Mr. WALTER. It seems to me the way to bring that to a head right now is for the Attorney General of the United States to select a person who is a well-known member of the Communist Party—he knows

who they are—and prosecute that person under the section of the Smith Act referred to.

Mr. RICHARDS. We are trying to do in one bill what Congress is attempting to do in so many bills, that is, make it a crime and punish them for that crime rather than punishing them for something else. We punish them now for income-tax evasion or something else.

Mr. WALTER. I am talking about prosecution under the Smith Act, under a set of facts necessary to be proved in court. Under existing law and under the proposed law you are discussing, you must prove exactly the same facts.

Mr. KETCHUM. We think there is a little difference.

Mr. DOWNER. I think the lines in Mr. Richards' statement that immediately follow show our view of what the difference is. We all recognize that reasonable minds differ, that is what courts are for, but we have analyzed in the statement that follows immediately what we consider to be the difference between this act and the Smith Act.

Mr. WALTER. I want to call your attention to the fact that the distinguished chairman of this subcommittee is a former district attorney under both Republican and Democratic administrations.

Mr. RICHARDS. We do not intend to get into politics. That is not our intention at all.

Mr. WALTER. Here is the thing that disturbs all of us as former practitioners. Look at this language on page 3 of the bill that you are discussing, line 21:

> Has made financial contribution to the organization in dues, assessments, loans, or in any other form—

then followed by this—

> Has made himself subject to the discipline of the organization in any form whatsoever.

I am quite certain you will agree with me that those two provisions are susceptible of very strange interpretation. If I should make a contribution to the Anti-Nazi League that would make me guilty under the terms of this law. Or if I should advocate public housing—which is the Communist Party line at this moment—that would make me guilty under this bill. The guilt is not related to the fact that the group is trying to overthrow the Government of the United States, but only to the activities I have enumerated.

Mr. HYDE. They are not only advocating public housing but graduated income tax.

Mr. WALTER. You will find that lawyers just do not quite agree that that is the proper approach. We are all concerned, just as you are, and I am very proud that the organization of which I happen to be past commander is so active in this field, but I do not think that is the way to do it. I think the way to do it is for the Attorney General to go to Mr. J. Edgar Hoover and say, "Give me the names of a couple well-known Communists," and prosecute them under the section of the Smith Act I have referred to.

Mr. RICHARDS. I think it would have a great effect on the whole world if the United States would pass some legislation to outlaw the Communist Party. I went to the Philippine Islands on my way back from Korea last fall and they have a bill and they tell me they can control communism better than we can; also in Thailand and Malaya.

Mr. GRAHAM. Have you seen the law passed in Texas?

Mr. RICHARDS. I only know the penalty, $20,000 or 20 years. Governor Shivers said he would go further and chop their heads off.

Mr. KETCHUM. We had the choice of coming here and waving the flag and trying to pull the tail feathers out of the Eagle, making a flamboyant statement, or trying to make a helpful statement to the committee. We know there are several bills pending. We think all of them are good. We do not know which is the best one. Consequently, we merely selected one to try to analyze it. It is not necessarily the best one. As a matter of fact, the one introduced by the distinguished member of this committee might be the best one.

Mr. WALTER. I have no pride of authorship. It was drafted by the staff of this committee.

Mr. KETCHUM. We realize the problem confronting this committee and we are interested in getting out legislation that will stand up and not be in conflict with the things this country holds dear.

Mr. CELLER. Would it not be better to take the Smith Act—certain flaws have been pointed out in that act—and see how it can be strengthened?

Mr. RICHARDS. It will have a psychological effect all over the world if we outlaw the Communist Party. The Smith Act does not mean much, but if we make it a crime for a person to be a member of the Communist Party it would have a good psychological effect.

Mr. CELLER. Would it not be better to strengthen the Smith Act than to do something that would be most impractical, that would duplicate what we have done heretofore, and which may involve certain unconstitutional provisions?

We do not legislate for the purpose of pleasing certain people abroad.

Mr. WALTER. The last pronouncement is what counts. If we water it down, that will be the law.

Mr. RICHARDS. Let us not water down anything.

Mr. GRAHAM. Proceed.

Mr. RICHARDS. Probably the argument will be made that proof of knowledge of the member is not substantially different from proof of the object or purpose of the party—that consequently there is no real difference in section 3 of this bill and present provisions of the Smith Act. However, it seems to us that in many cases a jury can reasonably infer knowledge of object and purpose, from the nature, character, and extent of participation in party affairs, and that in many cases the burden of prosecution would be lessened and in no case would it be made more difficult. Furthermore, the Government could always proceed under the Smith Act if it elected to do so.

While we do not presume to advise the distinguished lawyers on this committee on involved questions of law, we incline to the view that section 3 would violate established principles of Anglo-American jurisprudence if knowledge were not made an element of the offense. In any event, the courts would probably hold knowledge to be an essential element since there cannot be intent without knowledge. The requirement of knowledge would also be a safeguard to any dupes who may have unwittingly become members of the party or its frontal organizations. Such a safeguard seems especially important in view of the fact that section 3 provides for the passive commission of a

crime. That is, any person who is now a member of the Communist Party or any organization prohibited by section 3 would be guilty of a crime without the active commission of any act—by the mere maintenance of the status quo. In fact, the active performance of an act, the withdrawal of membership, is necessary to avoid the commission of a crime.

While we do not feel competent to advise the committee on the legal implications of this aspect of section 3, we believe the case of *Samuels* v. *McCurdy* (267 U. S. 183, 69 L. ed. 267) is in point. In this case the court held "a statute making possession of liquor lawfully acquired unlawful is not ex post facto so far as it affects continued possession in the future." In the opinion of Mr. Chief Justice Taft, the Court said:

> This law is not an ex post facto law. It does not provide a punishment for a past offense. It does not fix a penalty for the owner for having become possessed of the liquor. The penalty it imposes is for continuing to possess the liquor after enactment of the law.

Under the rule of this case it seems the Congress can lawfully provide that the continuation of membership in the party shall be a criminal offense. What might appear to be the harshness of this rule is counteracted by the requirement that the membership must be accompanied by knowledge of the revolutionary object and purpose of the party.

With further reference to section 3, attention is called to the first line thereof which reads as follows: "Whoever, therefore, being a member of," shall be guilty of an offense under the conditions stated. This language seems to require proof of actual membership. We suggest the language be changed to read "whoever, being a member of or affiliated with." This suggested language eliminates the surplus word "therefore" and relieves the burden of the Government in cases where there has been financial support and encouragement of party objectives.

To further clarify "affiliated" it is suggested the bill include a definition similar to that contained in the Internal Security Act (50 U. S. C. A. 782 (17)) which reads as follows:

> (2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of "affiliation."

Section 2 of the bill seeks to strip the Communist Party, its affiliated, subsidiary and frontal organizations of all semblance of legality. In seeking the accomplishment of this purpose one should consider what the Communist Party is and what it is not.

In the first place, the Communist Party is not incorporated and therefore has no existence as either a natural or artificial being. It is rather well settled in the law that an unincorporated association of persons is not a legal entity and has no legal existence separate and distinct from its members.

The Communist Party, therefore, seems to be merely a name representing the common purpose of its membership. It is an intangible, ethereal thing that cannot be captured or restrained except by capturing or restraining its members. Membership, which is an individual thing, is forbidden by section 3 and can be enforced by appropriate

action against the individuals. Without members there can be no active party and the common purpose would be frustrated. It, therefore, seems to us that illegality of membership is more important than illegality of party.

To make the party itself unlawful would make a valuable contribution in a less apparent sense and it would certainly be a consistent and fitting corollary to illegality of membership. However, the language by which section 2 seeks to accomplish this objective, is, in our judgment, far too broad and indefinite. The words "affiliated," "subsidiary" and "frontal" should be defined.

The Daily Worker is a Communist newspaper published by a corporation which is incorporated under the laws of the State of New York. It is our opinion that section 2, as written, would take from this corporation all legal rights including the right to trial by jury, representation by counsel and the presumption of innocence. This raises serious constitutional questions that might result in invalidation of the law. To avoid this possibility and still achieve destruction of such tools of the party, we suggest that consideration be given to rewriting this section to enumerate certain rights to be withdrawn.

In addition, Congress might make it unlawful to incorporate for the purpose of promoting any objectives of the party and might provide for the dissolution and receivership of all such corporations now in existence. This would create an effective weapon to employ against all organizations that have a legal existence and therefore legal rights, separate and distinct from its members.

In conclusion, I should like to say that in the presentation of the foregoing views, we do not wish to appear presumptuous. We are not qualified by knowledge or experience as experts in constitutional law. However, I believe it is appropriate to recall the words of Lord Coke:

> The law is commonsense, but yea, not every man's commonsense.

Our commonsense tells us that the founders of the Republic did not intend our Bill of Rights to protect and assist agents of a foreign power seeking our destruction. We urge you to report a bill and thank you for your attention to our views.

Mr. GRAHAM. Now if the members would like to question you. Mr. Hyde, are there any questions you care to ask?

Mr. HYDE. Just this. I take it from the last statement that you have not gone into a legal analysis of the constitutionality of the bill from the standpoint of due process or a bill of attainder?

Mr. RICHARDS. I believe our attorney looked into that.

Mr. DOWNER. I think we have to recognize what the Communist Party is and what it is not, and in the first place it is not incorporated. Actually, it is nothing but a name representing the common purpose of its membership. It has no legal existence. I do not think the Communist Party has any rights because it is not anything separate and distinct from its members. So I think for the Congress by legislation to say the Communist Party is unlawful is merely asserting a corollary to the declaration of illegality of membership. That is our view of the thing, that the Communist Party itself is nothing. It cannot have any rights. There can be no constitutional question involved in taking rights from something that does not exist in the legal sense.

Mr. WALTER. Is that not true of all political parties?

Mr. RICHARDS. That is why we want to get to the membership of the party.

Mr. CELLER. We have in New York the American Labor Party. Let us assume the American Labor Party started out in an innocent way and then was infiltrated by having Communists in its membership and its apparent purpose may have changed. How many Communists would be required to enter that American Labor Party to make it outlawed? I want you to take this into consideration before you answer the question. Membership in the Communist Party or in the other party that comes within the purview of this act would be a crime. There may be a great many innocent members of such an organization. When, therefore, will that party become outlawed?

Mr. DOWNER. In that instance, Mr. Celler, one essential element of proving guilt would be to prove revolutionary object and purpose of the party.

Mr. CELLER. How could you prove that? Say for practical purposes 2 or 3 members were violent and advocated the overthrow of the Government by violence and the others were perfectly innocent and did not advocate such things. Let us say 10 or 13 were violent. When would that party be outlawed?

Mr. KETCHUM. It seems to me when the Communist membership of this particular party becomes the controlling factor to determine the policy and objectives of this particular party, and when it becomes revolutionary in nature, then it becomes automatically in the same category as the Communist Party.

Mr. CELLER. What is meant by "control"? Does it mean financial control, control over the officers, or control over the principles?

Mr. KETCHUM. A little of each, but principally control over the principles enunciated by the party.

Mr. WALTER. In some of the hearings conducted by the Committee on Un-American Activities, of which I happen to be a member, we have found that only a small percentage of the members of a group are Communists or follow the party line. Let us analyze that. Suppose that sort of a situation exists. Are all the members of that particular group subject to prosecution? Suppose 98 percent are revolutionary, are the other 2 percent guilty by the mere fact that they are affiliated with the group to strengthen the graduated-income tax of the United States?

Mr. KETCHUM. I cannot believe that dependable, worthwhile, loyal citizens would long belong to a party whose control had fallen into the hands of those who have as their objective or purpose revolutionary functions now ascribable to the Communist Party. We all know of instances that have been developed in recent hearings and investigations where many worthwhile persons have at times been associated with what are called front organizations, and on learning the purpose and identity of those organizations, they have immediately withdrawn their membership or their subscription to the same.

Mr. WALTER. Where do you draw the line?

Mr. KETCHUM. I do not believe any law should be so rigid and inflexible that it would immediately brand any party as being the same as the Communist Party, because Communists have infiltrated into it and were attempting to capture the policies and purposes of the organization.

Mr. HYDE. Is not that exactly what you do under this law? For example. as I get the analysis that has just been made by the colloquy, you have to in certain instances prove at a certain point the party did become dominated and controlled by the Communists, and that the people who are being prosecuted under it were members of it with knowledge of that fact.

Now, if that is true, are you not right back to the Smith Act again?

Mr. KETCHUM. In a sense, when it comes to the other parties.

Mr. DOWNER. That is exactly right, when some other party than the Communist Party is concerned. I think that the objection that Mr. Celler made, or the question that he raised, and the question that Mr. Walter raised also, of objection to such a provision in this bill, it is exactly what we have in the Smith Act as to the establishment of a crime by reason of membership in any party other than the Communist Party. To establish the crime by reason of membership, first it would be necessary to prove that the party sought to overthrow the Government by force and violence; that it was revolutionary in action and methods. Then to make membership in that party a crime, it would be necessary to establish to the satisfaction of the jury that the member had knowledge of that revolutionary object and purpose.

Mr. CELLER. Is not this what is going to happen if we pass this bill: the Communists will not use the label of the Communist Party; they will discard it and take on some other form and go underground and have no party. If they use any other name, or take on any other identity, then, as Mr. Hyde says, you will have to go through the procedure of the Smith Act.

Mr. RICHARDS. I think what Mr. Walter had reference to was a situation like this: 2 or 3 people would withdraw from the Communist Party and infiltrate every party we have in this country. He was concerned whether we would prosecute the whole party for the 2 or 3 who might be in whatever party it might be.

Mr. CELLER. Then you will have to bring to bear the whole subject of the Smith Act, as Mr. Hyde said.

Mr. KETCHUM. Let me again remind you, Mr. Celler, of the last sentence in the statement. It is:

> We urge you to report a bill and thank you for your attention to our views.

It would not necessarily be the Dies bill. We were attempting, as I say, to make some comment. You will notice that we did not get into that section that you are now discussing about the other groups.

Mr. GRAHAM. Pardon me a moment. You are simply using, as I understand it, the Dies bill as a vehicle?

Mr. KETCHUM. That is right.

Mr. GRAHAM. To get before the Congress your viewpoint?

Mr. KETCHUM. We had it in our mind before this committee ever reported out a bill that you would probably draft one that would meet all the various conditions that have been developed through these hearings. The thing we were concerned with was sections 2 and 3 of the Dies bill, and there were certain implications involved in there that we wanted to bring out in our testimony before you this morning.

Mr. HYDE. I am sure we appreciate that. What we want to do is to get the benefit of the study you have made of these questions that

perplex us in the record for the purpose of our consideration of what action we will take, if any. I hope that you do not misunderstand. The questions are not for the purpose of any criticism; they are not for the purpose of differing with you on what you have said in your statement. They are simply for the purpose of getting the benefit of the study you and your counsel have made of these problems, which are the problems that perplex us, and which we are going to eventually make a determination on.

Mr. KETCHUM. I still think you are entitled to an answer to the question that you raised awhile ago. I think Mr. Downer started out to answer it, but he got sidetracked. I think your question was, as I understood it, did we give constitutional consideration to a bill to outlaw the Communist Party? Now, did you mean the Dies bill?

Mr. HYDE. Yes.

Mr. KETCHUM. Well, I will let Mr. Downer answer that. I do not think we give consideration to all of the facets of the Dies bill. He did give consideration to the constitutional question to outlaw the Communist Party, and I think that is what he was attempting to answer a few moments ago.

Mr. DOWNER. If you mean, Mr. Hyde, as to the constitutionality of the conclusive legislative finding, we rather brushed over that. The Congress has already made legislative findings in the Internal Security Act, and that matter is pending in the Court of Appeals for the District of Columbia at the present time. We just do not feel that we are sufficiently expert constitutional authorities to discuss that question with you, and especially since it is going to be a moot question after the decision of the courts. We went on the assumption because the Congress has already done so, and because of the fact it is now pending in the courts, that that was a constitutional exercise of authority by the Congress to make a conclusive legislative finding. As we pointed out in the statement, that finding has been made in the executive branch of the Government and has been made in the judicial branch of the Government. It seems to be a matter of common knowledge that the party is revolutionary and seeks to overthrow the Government by force and violence. Our common sense tells us that it is folly for us to shut our eyes to what is an obvious fact and say that recognition of it violates the Constitution.

Mr. GRAHAM. I think that Miss Thompson has a question to ask.

Miss THOMPSON. Mr. Chairman, I want the gentlemen who have appeared here in behalf of the bill to know that I am very much interested and I am sure that out of all the bills that have been introduced we are going eventually to get a good bill that will cover all the points that have been brought out.

Mr. KETCHUM. That is exactly, Miss Thompson, what we want—whether it is the Dies bill, the Walter bill, or whose bill it is, or whether you take this part of one bill and another part of another. We want a bill that will stand up.

Miss THOMPSON. That is what we want, too.

Mr. KETCHUM. We are concerned about that.

Mr. GRAHAM. Off the record.

(Discussion off the record.)

Mr. KETCHUM. Whatever you do, if you can only tag it with the fact that it is going to outlaw the Communist Party. Whether it is

an amendment to the Smith Act, or a brand-new approach to the problem, I think, as the commander said earlier, it will be very effective around the world to know that this country has had the courage to enact legislation which will outlaw the Communist Party.

Mr. CELLER. It might be effective in the way that you indicate. A lot of things may be effective, but they might carry consequences which are more serious than the evil that you are trying to get at. It might be easy for us to pass resolutions condemning a certain gentleman who writes a certain column in the press today, but that might be harmful. It might meet with the approval of a lot of people throughout the world.

Now, I would like to ask your counsel this: Have you considered the constitutional aspect of this with regard to freedom of speech, freedom of assembly, and freedom of the press?

Mr. RICHARDS. Yes, but they are trying to destroy that very thing—the thing that makes that possible.

Mr. GRAHAM. You gentlemen may not know this, but we had a member of the Communist Party come here and testify. I took the position that we meet without any fanfare, or exploitation; that we simply get down to the facts. We invited this man and he came in. I told him at the start that as long as you confine yourself to a criticism of our Government, if you think that certain things should be changed, under the rights of free speech you can say that, but the minute you begin to advocate the overthrow of our Government, out you go.

Mr. CELLER. I am trying to get the views of counsel on that just briefly.

Mr. DOWNER. Mr. Celler, in the Commander in Chief's statement we quote Lord Coke:

> The law is common sense, but yea, not every man's common sense.

Certainly reasonable minds will differ on the question you have raised, and it is a very complex one. I do not presume to know the answer to it, sir. My recollection of the opinion of our high court in Dennis against the United States was that they applied Justice Holmes' doctrine of clear and present danger and found that the evidence before the trial court clearly established that the Communist Party and its activities constituted a clear and present danger. I think that finding has been made by all of the courts that have tried Communist cases, and has been made by the executive branch of the Government under the Internal Security Act. We are inclined to think that there is almost universal agreement that the Communist Party is, and does, constitute a clear and present danger, and of course, as the court pointed out in Dennis against the United States, there is some restriction. We can under our Constitution make some restriction on freedom of speech.

Mr. CELLER. But most of the bills before us provide that membership in the Communist Party, which is outlawed, would be a criminal offense. In what respect would that be constitutional?

Mr. DOWNER. Well, I should think, Mr. Celler, that the elements of the offense would be this: That the elements would be, first, the revolutionary object and purpose of the party, the seeking and the advocating of the overthrow of our Government by force and violence. So far as the Communist Party itself is concerned, that fact would be established by conclusive legislative findings.

Mr. CELLER. Would those legislative findings be binding upon any member regardless of what his station and his knowledge might be?

Mr. DOWNER. So far as the member is concerned, Mr. Celler, he would be required to have knowledge of the revolutionary object and purpose of the party.

Mr. CELLER. We go back again to the same proof you would have to bring to bear upon the situation that is involved in the Smith Act.

Mr. DOWNER. I think not exactly. I think, as we point out in the statement, the member's knowledge of the object and purpose of the party, that a jury could reasonably infer that from the nature, character, and extent of his participation in the party activities. That would be a different thing from requiring the Government to prove in a prosecution of a member that that party did have a revolutionary object and purpose, because knowledge could be inferred much more easily from the nature and character and extent of the member's participation in the affairs of the party.

Mr. GRAHAM. May I say something to that point? As you know, some of us have been here quite a number of years—Mr. Celler, Mr. Walter, and myself. We have been having investigations of Communist activities in this country for the 16 years that I have been in Congress.

In the early days it was always alleged that the rank and file did not know what the leaders were driving at; what their objective was. Over the years I have carefully read the works of Earl Browder. In college I studied Marx's manifesto and never dreamed that we would deal with them. I studied William Z. Foster. Those 2 are probably the 2 leading exponents of communism.

Then we coupled with that the revelations made by Elizabeth Bentley and other persons who have come before us and testified.

It is my belief that no man or woman today, who joins the party, can help but know what the revolutionary character of the organization is, and once having joined, they have committed themselves, and there is no avenue of escape by saying: "I did not know; I was not familiar."

You can read the Daily Worker. I used to take it, but I got so mad at it I threw it out. Those things all indicate one clear line of action, and anyone who is in that party knows exactly what he is going to do.

I remember back to the days when we had the Harry Bridges matter before us, way back in the 78th Congress, and the same argument was made—we did not know; we did not understand.

I cannot conceive today how any man or woman who is a member of the Communist Party does not know exactly what it stands for, what its objectives are, and what they are seeking to do. That is my own personal slant on this.

Mr. RICHARDS. I will assure you one thing, if you will bring a bill out of this committee on the floor we will do everything we possibly can, and use all the influence and power of the Veterans of Foreign Wars to see that you get the bill passed.

Mr. CELLER. We do not want banners to fly and great pressures to be used to make an appeal to emotions rather than to sanity, as is often the case in matters involving patriotism and communism. We have to be very careful here. We are often misjudged because

of our care. We have to examine every word in a statute of this sort so that we will not develop more damage than the evil that is attacked.

Mr. KETCHUM. That is what we tried to make clear at the beginning, that it would have been comparatively simple for us to come up and make a flamboyant patriotic statement demanding legislation regardless of the nature or character of it, to outlaw the Communist Party. But we know that this committee is under the gun, that whatever you produce must be right, because it must stand the constitutional test, and it must not pave the way for ultimate destruction of all of the great fundamental values that have made this great Nation. That is why we tried in our limited way to enter into a discussion of some of the angles of one piece of this legislation. That is why we also pointed out that there must be some safeguards in there—as we pointed out in connection with the incorporation of the Daily Worker—and that you just cannot haul off and take all rights away from something that has certain rights under our Constitution; that the proper steps must be taken before you can accomplish this in a legal manner.

Mr. CELLER. That is a fair approach. We appreciate that approach.

Mr. GRAHAM. We do.

I want to say personally that the time is about up. We do not want to deprive you of anything you wish to say. We do appreciate most sincerely your coming here today. You have made a very valuable contribution, and as you see, these questions are directed in an honest effort to bring about a law that will be effective and carry out your wishes. You have been a tower of strength to us. You have given us the support we need. I want you to know and feel that we deeply appreciate everything you have done. We especially arranged this meeting for you, Mr. Richards, because we knew of your commitments and we did not wish to interfere in any way.

It has been an honor to have you here with your counsel, and we will do our best to have one more hearing. The American Legion is yet to be heard.

Mr. HYDE. Just one more observation: We are in this worldwide battle with communism, the Communist ideal, and it is a battle of ideas and ideals. We are engaged in this battle with people who know nothing particularly about our Constitution and our ideas of freedom, or our Bill of Rights. They know nothing in particular about just exactly what it is the Communists believe in and are driving at.

One of the things which we fight the Communists with in this battle of ideas is that we are for freedom. We emphasize the word "freedom," and one of the things we point out in our condemnation of communism is that they are engaged in the complete suppression of freedom. They do not permit, for example, anyone in Russia to advocate and expound our ideas of freedom.

I think that one of the things we have to be careful about is that we do not give the Communists a tool by which they can say—yes, you say that we will not permit in Russia the ideas of the western democracies, but by the same token the western democracies will not permit within their borders our ideas.

Now, I think that we have to be careful we do not lay ourselves open to that.

Mr. RICHARDS. Let us be realistic. Let us not be so free that we give them the whole works and eventually we will not be free unless we do have some safeguards.

Mr. KETCHUM. I do not think there would be any objection to a study of communism as a doctrine. What we do object to is the Communist Party or its agents using a so-called legal entity to destroy our freedom and the dignity of man.

Mr. HYDE. You are objecting to their subversive activities?

Mr. KETCHUM. That is right.

Mr. GRAHAM. Before we adjourn I would like to submit for the record a statement by Representative Bennett in support of his bill, H. R. 3398, and also a statement by the National Lawyers Guild.

(The statements referred to are as follows:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., June 1, 1954.

Hon. LOUIS E. GRAHAM,
Chairman, Subcommittee No. 1,
House Judiciary Committee,
Washington 25, D. C.

DEAR COLLEAGUE: Thank you for your letter of May 25, 1954, relative to antisubversive legislation in general and my bill, H. R. 3398, in particular. I assume from your letter, read in conjunction with my letter to you of May 18, 1954, that hearings will be held on this subject this week and that the committee will give full consideration to H. R. 3398 and other antisubversive bills.

I would like very much to give your subcommittee my ideas on H. R. 3398, along the lines of the statement enclosed. I would prefer to give this statement orally before you at the hearing, and I would appreciate your advising me if I may have an opportunity to do so. If this would not be possible, I would deeply appreciate consideration by your subcommittee of this statement in connection with H. R. 3398.

Thanking you and with kindest regards, I am,

Sincerely,

CHARLES E. BENNETT, M. C.

STATEMENT OF CHARLES E. BENNETT, MEMBER OF CONGRESS

Mr. Chairman, I deeply appreciate this opportunity of testifying before this subcommittee in favor of H. R. 3398, my bill to strengthen our laws against subversives. This subcommittee is certainly to be commended for the interest it is showing in stronger laws in this field, and for the effort it is making to bring forth wise legislation of this type.

H. R. 3398 contains a number of antisubversive provisions. I will discuss them one by one, with particular reference to the Department of Justice report on this bill which was transmitted to me with the chairman's letter to me of April 27, 1954. The Department's report is generally favorable to the bill's major objectives, but it raises some questions which I would like to answer.

Section 1 of the bill is a recitation of findings by Congress concerning the Communist menace. Section 2 directs the Attorney General to commence criminal proceedings against all persons whom he has reason to believe are subversive when he has reason to believe such persons have committed any offense punishable by any law of the United States. The Department's report thought these two sections are unnecessary. I have no strong feelings concerning this portion of the bill, and I am willing for the committee to delete these sections.

Section 3 proposes an amendment to rule 46 (a) of the Federal Rules of Criminal Procedure permitting Federal judges to deny bail before conviction to persons arrested for offenses of a subversive nature. As this rule now reads, such persons must be admitted to bail, regardless of the possibility that they will carry on their dangerous activities while released on bail, and regardless of the possibility that they will escape and forfeit bail. The first part of section 3 would place such individuals in the same category as those arrested for capital offenses, as to whom the judge may admit to bail or not, in the sound exercise of his discretion. The second part of section 3 would amend paragraph (2) of rule

46 (a) so as to prohibit the admission to bail of persons convicted in lower courts of subversive crimes while their cases are being appealed and heard in appellate courts.

The need for an amendment of this type was shown by the ease with which Communists have obtained and later jumped bail when it served their purposes to do so. Gerhart Eisler was convicted in a Federal Court on August 15, 1947. He jumped bail and fled behind the Iron Curtain on or about May 17, 1949. Four defendants in the celebrated Denis case, Robert G. Thompson, Gus Hall, Henry Winston, and Gil Green jumped bail on or about July 2, 1951. This was after their convictions were affirmed by the Supreme Court and just before they were to report to the court of original jurisdiction for sentencing. Thompson and Hall have been apprehended, but Winston and Green are still at large.

From the information I have been able to receive on these cases, it seems that the judges felt they were bound by the present wording of rule 46 (a) to grant bail in these cases, since they found that the cases involved a substantial question to be decided by the appellate courts. If the amendment proposed by section 3 had been in effect, the judges would have been able to deny bail to these defendants prior to conviction. After conviction, they would have been prevented from granting bail to them.

In its report, the Department raised the procedural objection that the Federal Rules of Criminal Procedure should not be amended by Congress but only by the Supreme Court. I am perfectly willing for the Court to make this amendment, and I have asked Chief Justice Warren to consider it. However, this is an amendment which Congress may also make by amending the statutes concerning bail. In order to comply with the suggestion of the Department of Justice I suggest the following as a substitute for section 3 of the bill:

Page 3, line 13, strike out all through line 17, page 4, and insert:

"SEC. 3. Section 3141 of title 18 of the United States Code is hereby amended (1) by inserting '(a)' immediately before 'Bail', and (2) by adding at the end thereof the following:

"'(b) A person arrested for an offense shall be admitted to bail before conviction if the offense is not punishable by death, and if the offense (1) is not punishable under section 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, or 1390 of this title; (2) is not punishable under section 4, 21, 112, 113, or 114 of the Internal Security Act of 1950; and (3) is not an offense for which a penalty is prescribed by section 15 of the Internal Security Act of 1950. A person arrested for an offense which is punishable by death, or which is described in clause (1), (2), or (3) of the preceding sentence, may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense'.

"'(c) Bail may be allowed pending appeal or certiorari only if (1) it appears that the case involves a substantial question which should be determined by the appellate court and (2) it appears that allowing bail in such case will not be detrimental to the national security and (3) it appears from the nature of the offense and other circumstances of the case that the defendant will probably appear at the time appointed. Bail may be allowed by the trial judge or by the appellate court or by any judge thereof or by the circuit justice. The court or the judge or justice allowing bail may at any time revoke the order admitting the defendant to bail'."

It should be noted that the above substitution does not absolutely prohibit bail after conviction, as did the original section 3. I am willing to consider this change on the basis of the report although I personally think that the old section 3 was not too drastic.

The report went farther than criticizing section 3 on procedural grounds. It opposed this section in principle as well, expressing the opinion that "the present practice of having a judicial determination of the entitlement to bail in all cases on review is one which affords adequate protection to both the Government and defendants." I deny this assertion. The facts do not sustain the report's position. The examples I have cited above should be enough to prove the need for a statutory change. Eisler has spent years working for communism since he jumped bail. His services to world communism have been worth many times the amount of the bail which he forfeited. We do not know where Winston and Green are. But we can be certain that they are up to no good. Even if they are doing no harm, the impunity with which they have escaped punishment testifies to the power of world communism to take care of its own under the laws of our country as they now read, even after they have been

arrested and convicted in our courts. It is an assurance to others that they need not fear United States laws as they carry on similar activities.

No discussion of bail is complete without considering the effect of the eighth amendment, which reads: "Excessive bail shall not be required * * * It was said in *Martin* v. *Johnson* ((1895), 11 Texas Civil Appeals 633), that this clause in the eighth amendment had its origin in an act of the British Parliament in 1688. From the history of this statute prior to the American Revolution, it seems that it was never given the effect of requiring bail as a matter of absolute right in all cases. One of the first acts of the 1st Congress, the act of September 24, 1789, made the granting of bail discretionary in capital cases. In *U. S.* v. *Lawrence* ((1835) 26 Fed. Cas. No. 15,577), it was held that whether denial of bail in a particular case contravenes the prohibition against excessive bail depends upon the seriousness of the crime charged and the effect on public safety of allowing bail in the case. Criminal rule 46 (a) also recognizes that the circumstances of the case may make the denial of bail consistent with the prohibition against excessive bail. It emphasizes the circumstances of whether the appeal was taken frivolously or whether the grounds for the appeal are fairly debatable. In the amendment to section 3 which I am proposing, I am merely adding two additional circumstances for consideration by a court in deciding whether to grant bail, to-wit: national security and the possibility of bail jumping. The Lawrence case gives fair assurance that these additional criteria are consistent with the eighth amendment.

Section 4 of H. R. 3398 would extend the present statute of limitations for subversive offenses for 2 years after date of enactment in all cases in which the period of limitation would otherwise expire during those 2 years. The Department's report recognizes the desirability of extending limitations in such cases. However, it seems to prefer the Attorney General's proposal to extend the statute of limitations in such cases to 5 years. The important thing, it seems to me, is that these limitations be extended, and I am willing that they be extended as recommended by the Attorney General. My proposal in section 4 is an alternative method for accomplishing this result which the committee may wish to consider.

I have already testified before this committee on section 5, in connection with your hearings on proposals to outlaw the Communist Party. This adds to the classes of persons to be punished under section 2385 of title 18, United States Code, the following:

"Whoever collaborates with any agent or adherent of a foreign nation in working for the overthrow, destruction, or weakening of any government in the United States, whether or not by force or violence—."

At present, section 2385 does not touch those who, like Harry Dexter White, are not members of the Communist Party or who do not openly support the Communist cause, but who covertly assist agents of foreign governments in working for the overthrow of our Government. This would cure that inadequacy in the law.

The Department criticized section 5 as too broad and vague. In an effort to meet this objection, I am submitting this redraft:

"Whoever gives aid and comfort to any agent of a foreign government in working for the overthrow or destruction of any government in the United States, knowing of such purpose—."

This redraft contains words of art which have been well defined judicially or by statute.

Section 6 proposes to eliminate the distinction between peacetime gathering and delivering of defense information to aid a foreign government and such activity in wartime. It provides for the present wartime penalty, death or 30 years imprisonment, regardless of when the offense is committed. The Department criticized my phrase "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation" as a test of criminal intent in such cases. I am willing to meet the Department's criticism by substituting these words: "with intent that the same shall be communicated to the enemy or to a foreign nation to the possible injury of the United States."

The Department also observed that, "As drafted, these subsections do not permit the imposition of a sentence of imprisonment for a term of years in excess of 30, yet authorize the death penalty." This is a criticism of the present statute, not of my proposed amendment. It is perfectly all right with me if this subcommittee would like to amend the penalty provision to read, as recommended by the Department: "death, or imprisonment for any term of years or for life."

Section 7 would amend the Uniform Code of Military Justice to provide the death penalty for espionage in peacetime as well as in wartime. The Department had no comment on this section. If the committee decides to approve section 6 of my bill, it would seem that section 7 should also be approved in order that comparable penalties would be involved for comparable crimes.

Section 8 would amend the Immigration and Nationality Act to strip American citizenship from naturalized citizens convicted of obtaining Government office or employment without disclosing their membership in subversive organizations, and would add to the list of deportable aliens those who have been denaturalized in this way. The report raised no objection to this. The President proposed legislation of this type when he said in his State of the Union address on January 7, 1954:

"I recommend that Congress enact legislation to provide that a citizen of the United States who is convicted in the courts of hereafter conspiring to advocate the overthrow of this Government by force or violence be treated as having, by such act, renounced his allegiance to the United States and forfeited his United States citizenship."

STATEMENT OF THE COMMITTEE ON CIVIL RIGHTS AND LIBERTIES OF THE NATIONAL LAWYERS GUILD, NEW YORK, N. Y., FOR THE HOUSE JUDICIARY COMMITTEE ON PENDING BILLS TO OUTLAW THE COMMUNIST PARTY

The National Lawyers Guild is a bar association with members throughout the United States. It is pledged "to protect our democratic institutions and the civil rights and liberties of all the people."[1]

THE PENDING BILLS

Eight bills[2] are pending before you to outlaw the Communist Party of the United States. Five declare the Communist Party, by name, to be illegal; all eight make it a crime, punishable by fine, imprisonment, and in some cases loss of rights of citizenship,[3] to become or remain a member of the Communist Party. Three of the 8 bills also extend to Communist Front[4] or similar[5] organizations. A ninth bill, H. R. 6943, creates a commission to study the question of outlawing the Communist Party.

As the Guild believes that the proposed bills threaten "the civil rights and liberties of all the people" and present serious constitutional questions, the Civil Rights and Liberties Committee presents this statement, in order that its views may be considered by the House Judiciary Committee.

THESE BILLS STRIKE AT THE HEART OF A DEMOCRATIC SOCIETY

Bills of this kind have been introduced in each session of Congress for a great many years and the guild has always opposed them. As long ago as 1948 the guild said: "We are witnessing today an attempt by Government to deprive a political party, the Communist Party and its members, of privileges enjoyed by every other political party in America. There can be no talk of 'government by the consent of the governed' when any body of citizens is excluded from the market place of ideas. * * * Freedom of political association is the essence of our constitutional system. The rights of citizens to associate with other persons having common beliefs, to select representatives of their own choosing and submit them to the popular will at the ballot box, are fundamental guarantees upon which the security of the country rests."[6]

Nothing has occurred to alter the views of the guild in this matter nor to justify any more serious consideration by Congress of bills to outlaw the Communist Party now than in the past.

Leading spokesmen for friendly western nations already find it difficult to understand the extremities to which we have gone in legislation or other governmental action for the stated purpose of protecting the internal security of the

---

[1] Constitution of the National Lawyers Guild, art. I, sec. 2.
[2] H. R. 8483, 8363, 8326, 7894, 7405, 7337, 6877, 5941.
[3] H. R. 7405, 7337.
[4] H. R. 8326, 7894.
[5] H. R. 7337, 7405, 6877.
[6] Statement of policy on civil liberties adopted by the NLG at its February 1948 convention.

United States. Our recognized position as the preeminent exponent of democracy will be irreparably undermined or destroyed if we now enact legislation to outlaw a political party and to punish the adherents of its ideas.

Certainly there is risk to the government in power if it allows free reign to the organized expression of seriously critical or hostile political ideas. And some may argue that there is greater security from invasion and from internal espionage and sabotage in a monolithic state where conformity is the iron rule and dissension of any kind is severly penalized. Even if this were true, the argument for Americans is self-defeating.

It is, after all, the American way of life that we seek to protect; and nothing is more fundamental to the American way of life than the right of the individual, without interference by the Government, to free speech and assembly. As the National Council of Churches of Christ recently said: "The American way is to preserve freedom by encouraging diversity within the unity of the Nation and by trusting truth to prevail over error in open discussion."[1]

This precious democratic heritage of ours can be destroyed easily by legislation of this type. For, if those temporarily in power can decide what political groups or ideas can compete for the acceptance of the people, the people are no longer actually free to choose their own Government. We should not delude ourselves into the notion that we can safeguard our free society or make our Nation more secure by such means. For if we do, we will certainly find, as time goes on, that we have abandoned the American way of life we sought to defend.

THESE BILLS ARE UNNECESSARY

Congress cannot, of course, make criminal the association of citizens dedicated to efforts to alter the Government by peaceful constitutional means. Nor can it, by legislative pronouncement, find them guilty—without trial of the issue—of attempting by unconstitutional and violent means to overthrow the Government.

Of course, the proponents of these bills argue that this is not intended. But if this is not the intention, the proposed legislation is unnecessary. For these bills would, in that case, serve no purpose which is not already covered by existing law.

Under existing law, persons may be punished by fine and imprisonment for treason (18 U. S. C. 2381), sabotage (18 U. S. C. 2151–6), insurrection (18 U. S. C. 2383), seditious conspiracy (18 U. S. C. 2384), advocating overthrow of the Government by force and violence (18 U. S. C. 2385), or organizing or being a member of an organization which so advocates. Also punishable by Federal law is undermining the loyalty, discipline, or morale of the Armed Forces (18 U. S. C. 2387), misprision of treason (18 U. S. C. 2382), importing literature advocating treason or forcible resistance to any Federal law (18 U. S. C. 552), injuring Federal property or communications (18 U. S. C. 1361), conspiracy against the constitutional rights of citizens (18 U. S. C. 371), or conspiracy to impede discharge of Federal officers' duties (18 U. S. C. 372).

In addition, organizations engaged in civilian military activity, subject to foreign control, affiliated with a foreign government or seeking to overthrow the Government by force, are subject to registration requirements under the Voorhis Act (18 U. S. C. 2386). The Communist Party, we understand, has not so registered.

Finally, under the Internal Security Act of 1950 (whose constitutionality in this field is still to be tested), Communist-action organizations (as determined by the S. A. C. B.) and their members must register and be subjected to numerous other forms of limitation. Under the emergency detention provisions of that act, persons found likely to commit sabotage or espionage may be detained, in time of proclaimed emergency following invasion or declaration of war, for the duration of the emergency. And to conspire "to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship" under foreign control is punishable by fine and imprisonment.

If the assertions in the preambles of most of these bills could be proved in a court of law (the traditional American method of proving the commission of crimes), prosecution under the foregoing acts is now open to the Government.

Some of these acts should, in our opinion, be declared unconstitutional (for reasons equally applicable to the proposed bills) but under them, taken together, what area of "subversive" activity is there which has not been taken care of?

---

[1] New York Times, March 18, 1954.

The question is not rhetorical. The answer is simple: There is as yet no way to imprison a citizen for the mere exercise of free assembly, the mere advocacy of ideas.

Perhaps this legislation is designed to meet a lack suggested by Mr. J. Edgar Hoover in his testimony before the Jenner committee last November. He said there: "It is still legal for Communists to exercise the right of assembly, free speech, and free thought."[8]

THESE BILLS ARE UNCONSTITUTIONAL

It is hard to understand how serious consideration could be given to the passage of these bills. One and all, they are so patently unconstitutional.

1. These bills impair free speech and assembly protected by the first amendment

Whatever else it is, whatever its other purposes are or may be found to be, the Communist Party nominates candidates for public office and carries on election campaigns; it publishes and circulates newspapers, magazines, books, and pamphlets; it conducts and sponsors lectures and public meetings. These bills, if enacted, would abridge its right to do these things, all of which are clearly within the scope of the protection intended to be afforded by the first amendment.

Congress cannot pass a law making it illegal for a political party to nominate candidates for office or to hold meetings and publish and circulate opinions. If it cannot do this directly it cannot accomplish the same result by the more drastic method of forbidding it to do anything at all.

In upholding the non-Communist oath demanded of certain union officials under section 9 (h) of the Taft-Hartley Act, the Supreme Court majority in *American Communications Association* v. *Douds* (339 U. S. 382) neither expressed nor implied a contrary view. The Court there said (at p. 404): "Section 9 (h) touches only a relative handful of persons, leaving the great majority of persons of the identified [i. e., Communist] affiliations and beliefs completely free from restraint. And it leaves those few who are affected free to maintain their affiliations and beliefs subject only to possible loss of positions. * * * The statute does not prevent or punish by criminal sanctions the making of a speech, the affiliation with any organization. * * * In this legislation, Congress did not restrain the activities of the Communist Party as a political organization. * * *"

While we believe the decision in the Douds case was wrong in sanctioning any infringement of the first amendment rights, it seems clear from the above-quoted matter that the Court wished to distinguish what it was sanctioning from what these bills propose.

2. These bills are bills of attainder

Article I, section 9, of the Constitution reads: "No bill of attainder or ex post facto law shall be passed."

"A bill of attainder is a legislative act which inflicts punishment without a judicial trial" (*Cummings* v. *Missouri* (4 Wall. 277)). "The classic bill of attainder was a condemnation by the legislature following investigation by the legislature following investigation by that body" (*Joint Anti-Fascist Refuge Committee* v. *McGrath* (341 U. S. 123, 144)).

These bills are legislative declarations of guilt in the simplest possible form—some in letter as well as in spirit: "Upon evidence which has been presented and proof which has been established * * * there exists an international revolutionary Communist conspiracy which is committed to the overthrow by force and violence of the Government of the United States and of the several States, such conspiracy including the Communist Party of the United States, its various components of affiliated, subsidiary and frontal organizations and the members thereof."[9]

Under our system of jurisprudence, verdicts of criminal guilt are to be voted by a jury of 12 after indictment and trial under due process of law, not by the Congress of the United States. This guaranty prevails even for minor crimes. Under these bills the verdict carries with it a sentence of death to the organization, a fine of $5,000 to $10,000, and a prison term of 5 to 10 years to its members. It deprives the organization of the right to acquire and hold prop-

---

[8] New York Times, November 18, 1953 (p. 23, col. 1).
[9] H. R. 8326, 7894. Essentially similar language appears in H. R. 8483, 8363.

erty, the individual the right to join and continue membership. Other bills dispense with the recital of evidence [10] and with the verdict upon the organization,[11] and merely pass sentence upon the individual member.

Since these bills would inflict such punishment without judicial trial upon a named organization, they clearly fall under the prohibition against bills of attainder. These bills also inflict punishment upon individuals by depriving them of their rights as members of such organizations as well as the right to join and continue membership.

THESE BILLS DENY DUE PROCESS OF LAW AND ABRIDGE THE RIGHT TO TRIAL BY JURY

As far as the Communist Party itself is concerned, these bills would deprive it of its property without due process of law merely by legislative fiat.

Moreover, although severe criminal penalties would be imposed upon individuals by these bills, the jury before which a defendant might come, should he be prosecuted under them, could try only the issue of his membership in the party. The question as to the character of the party would have been predetermined by the legislature and could not be considered by the jury. Clearly, this is an abridgement of the right to trial by jury and a deprivation of liberty without due process of law.

Finally, we may add that the bill may be unconstitutional on other grounds as well. For, in commenting on a far less drastic bill [12] introduced in 1947 to bar the Communist Party from the ballot in any election in the United States, the then Assistant Attorney General wrote: [13]

"Although this Department is in complete sympathy, of course, with the desire that no subversive or disloyal person should be permitted to hold a position of honor, trust, or profit in the Government, it is believed that the bill under consideration would be of doubtful validity and unenforceable for several reasons, the most outstanding of which are that it might be regarded as in the nature of a bill of attainder, a denial of due process of law, and an attempt by the Federal Government to legislate, insofar as it would apply to the qualifications of a political party in any election, in a field for which no Federal authority exists."

CONCLUSION

We have shown that these bills are undemocratic, unnecessary, and unconstitutional. We suggest also that they are unwise. The avowed objection to the Communist Party is not that it allegedly seeks to alter the system of government, but rather that it attempts to do by unconstitutional means and is controlled by a foreign power. These things are adequately dealt with by existing laws. What we have then are proposed laws which could be used to prevent peaceable attempts to effect changes in government by use of the democratic process—by speech, by assembly, by vote.

When dissenters are outlawed, denied the right to use the ballot, to hold open meetings, to publish their views, no constitutional means are open to them to effect their purpose. Resort to force is, in such a case, the only recourse open. It was from such repression of political dissension and such persecution of dissenters that violent revolution stemmed in our own and other countries. We cannot believe that our Government or any other, can strengthen the security of the Nation by depriving the people, or any part of them, of freedom of speech, press, and assembly.

We urgently recommend that all such legislation be rejected.

Mr. GRAHAM. I have to be on the floor. The other members have to be on the floor, also.

Mr. KETCHUM. We certainly appreciate the splendid cooperation and the gracious manner in which the committee has received us.

Mr. GRAHAM. The committee will stand adjourned subject to the call of the Chair.

(Whereupon, at 11:40, the committee adjourned subject to the call of the Chair.)

---

[10] H. R. 7405.
[11] H. R. 6877, 7337, 5941.
[12] H. R. 4482, 80th Cong., 1st sess., 1947. Similar to H. R. 1576 referred to this committee in this session.
[13] Letter to chairman, Committee on House Administration, from U. S. Department of Justice March 9, 1948.

INTERNAL SECURITY LEGISLATION

WEDNESDAY, JUNE 9, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:05 a. m., pursuant to adjournment, in room 346, Old House Office Building, the Honorable Louis E. Graham (chairman of the subcommittee) presiding.

Present: Representatives Graham (chairman), Walter, and Hyde.

Also present: Walter M. Besterman, legislative assistant, and William P. Shattuck, assistant counsel.

Mr. GRAHAM. The committee will come to order, please. Miss Thompson and Mr. Celler are both absent today. A quorum is present, Mr. Walter, Mr. Hyde, and myself. The first witness is Mr. Pennington, of the American Legion, who will be introduced by Mr. Miles Kennedy.

STATEMENT OF LEE R. PENNINGTON, DIRECTOR, NATIONAL AMERICANISM COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY MILES D. KENNEDY, DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. KENNEDY. Mr. Chairman and gentlemen of the subcommittee, my name is Miles D. Kennedy. I am the national legislative director of the American Legion. Our address is 1608 K Street NW., Washington.

First, on behalf of our organization I would like to thank you for granting us the privilege of appearing before your subcommittee in connection with this legislation which we are very much interested in.

Mr. GRAHAM. May I say we are delighted to have you because you represent a great organization of the United States and we feel that your influence and your voice in this matter is of very decisive weight.

Mr. KENNEDY. Thank you very much, Mr. Chairman, we appreciate that expression. I do not think there are many organizations that have actively opposed communism and all it stands for more than has our organization ever since we were organized and chartered by Congress in 1919. Our opposition has been continuous and continued. We expect certainly to do all we can to carry out any legislation along that line that may emanate from your committee.

I have with me this morning Mr. Lee R. Pennington, who has a prepared statement. After he finishes I would like to be granted the privilege of making just a few comments. Mr. Pennington served

with the FBI with great distinction for over 24½ years. He retired with honors from the FBI last fall. He retired on November 13, 1953.

I know from statements I have seen that Mr. J. Edgar Hoover was very sorry to lose Mr. Pennington. Mr. Pennington was appointed by our national commander, Mr. Arthur J. Connell, on November 23, 1953, just 10 days after he left the FBI, as director of our national Americanism commission, in which capacity he is still serving.

With your permission, Mr Chairman, I would like now to introduce Mr. Pennington, who has, as I said before, a statement which he would like to read into the record, and we shall be very happy to try and answer to the best of our ability any questions you gentlemen may have afterwards.

Mr. WALTER. Mr. Pennington, what is your position with the Legion?

Mr. PENNINGTON. I am director of the Legion's national Americanism commission, sir.

Mr. WALTER. By election, or what?

Mr. PENNINGTON. By appointment.

Mr. WALTER. The reason I asked, I have your letter before me on a subject I am very much interested in, in which you state:

I recently retired from the FBI and have taken over the directorship of the Americanism commission.

You say, "I have taken it over."

Mr. PENNINGTON. Well, I guess you would consider that more or less a figure of speech.

Mr. WALTER. I associated it with the other "I recently retired from the FBI," which of course does not impress me a bit. But here is something I want to ask you about. In your letter concerning the Intergovernmental Committee on European Migration, you state:

As I understand it, no minimum screening is required.

You are wrong about that. There is a considerable amount of screening.

Mr. PENNINGTON. That was my understanding.

Mr. WALTER. Mr. Reed and I have been delegates to every meeting of this Committee since it was established. You go on to say:

No standards of eligibility of applicants are set forth to govern the officer who will develop and administer the programs of international migration.

That, of course, is not the fact either. These officers are all selected in accordance with the constitution of the organization and with the President's loyalty program if they are American citizens. They are all very high-type people.

"No limit is fixed on the number of persons to be moved." That is correct. We trust that the targets will be exceeded. "No indication is given as to what portion of the cost is to be borne by the United States taxpayer." That is not correct at all. The United States taxpayer pays in accordance with the appropriation the Congress sees fit to make.

And so on. So you have started off in your new position on a pretty sour note as far as I am concerned. In other words, I am of the opinion that you do not know what you are talking about.

Mr. PENNINGTON. Mr. Congressman, that is certainly your privilege.

Mr. WALTER. That is my privilege, of course.

Mr. PENNINGTON. Frankly, sir, I am not an expert on immigration.

Mr. WALTER. You pose as one in this 3-page letter. You go way out of your way. For example, you say Senator McCarran had nothing to do with the erection of this conference, this Committee.

Mr. PENNINGTON. That was the information I got. I think, Mr. Congressman, you might talk to Senator McCarran.

Mr. WALTER. I have talked to him and I have known him intimately longer than you have. I talk with him very frequently. It was my privilege to participate with him and Mr. Graham and other members of this committee and the Senator in drafting of the immigration law which you speak of.

Mr. PENNINGTON. Mr. Congressman, may I ask a favor? Would you mind answering the letter telling me where I am wrong? Frankly, I am not an expert on immigration and I have to consult with men I believe who are and who live with the subject. So if you would answer me telling me where I am wrong, then I can go back to those I consulted with. Immigration is a subject in itself. I certainly do not claim to be an expert on the subject.

Mr. WALTER. If you are not an expert on the subject, why do you write to the chairman of this committee?

Mr. PENNINGTON. You asked me questions, sir. I tried to answer them.

Mr. WALTER. I say, why do you write and suggest that you are giving this committee information, when as a matter of fact you do not know what you are talking about by your own admission?

Mr. PENNINGTON. I think you have kind of twisted it, sir.

Mr. WALTER. I can read and hear pretty well. Although I have never attained the high position of having had a badge on, nevertheless I know English when I see it. At least I have been exposed to an education, if I have not had one. I know just what you have said here. I do not think that our great organization, which I was a member of probably longer before you——

Mr. PENNINGTON. I know that, sir.

Mr. WALTER. Ought to put in the position you are now taking, someone who obviously does not know what he is talking about. It just destroys my confidence in this great organization that I helped to organize. I have accepted without question anything that Mr. Kennedy has ever suggested. But here comes this——

Mr. GRAHAM. Why not, Mr. Walter, do what Mr. Pennington has asked?

Mr. PENNINGTON. I would appreciate an answer, sir.

Mr. GRAHAM. Point out wherein he is mistaken.

Mr. WALTER. I just have seen it, and while I am no expert, I do know a little bit about immigration. You are the expert——

Mr. PENNINGTON. I am not an expert and I do not claim to be an expert. I go to men who I believe can furnish me information. My answer was entirely on the basis of information I was furnished. I asked them for it in order to become acquainted with it.

Mr. WALTER. Now that you have taken over, according to your own words, the directorship of the Americanism commission, I hope that you will try to learn something about the subject before you tell us what to do about it.

Mr. PENNINGTON. Mr. Congressman, I was not trying to tell you. I was just trying to give you an answer to your question on the basis

of the best information available to me. I am sorry that you are taking it personally, because frankly I am mandated by the national convention to try and further certain activities in which the Legion is interested. Not being a world beater on those, I try to go to the people who can furnish me the best information. My answers are based entirely upon those.

Mr. WALTER. Now you will be interested in knowing that a representative of our organization came to see me and discussed this very subject. When I pointed out certain facts to him, he said, "Well, this resolution is merely advisory. If you know better, then of course you do know better."

Now that resolution was adopted in a meeting of maybe two people, one moved it and a seconder, I suppose.

Mr. PENNINGTON. I think it was the national convention, sir.

Mr. WALTOR. No; it was not.

Mr. KENNEDY. Might I ask Mr. Walter which resolution you are referring to?

Mr. WALTER. That was the resolution with respect to the Intergovernmental Committee on Migration.

Mr. KENNEDY. The reason I asked, sir, we have several resolutions on immigration.

Mr. GRAHAM. May I suggest you go ahead now, Mr. Pennington.

Mr. PENNINGTON. Mr. Chairman and gentlemen of the subcommittee, I wish to take this opportunity to express our sincere appreciation for the privilege of stating the position of the American Legion in connection with the legislation now pending before your subcommittee.

At the 1953 national convention of the American Legion, resolution No. 356, a copy of which is enclosed, was adopted calling for additional legal restraints to stop the Communists from their continued and continuing infiltrations into the governmental, industrial, cultural, educational, and professional life of the Nation.

In the past, objections from responsible sources have been made on the ground that such legislation would drive the Communist Party underground and materially increase the difficulties of the FBI in thoroughly investigating subversion.

That premise no longer exists, as Mr. Hoover stated in his testimony before the House Subcommittee on Appropriations on December 9, 1953, that there are now two types of leadership in the Communist Party, one, "open leadership" comprised of people like William Z. Foster and a select group of others; and "an underground" leadership which actually has been assuming more and more authority and control to administer the entire party in the event it is no longer feasible to continue in the open.

Mr. J. Edgar Hoover, in his testimony before the House Subcommittee on Appropriations on December 9, 1953, stated that the dangerousness of the Communist Party should not be judged merely by the extent of its membership. He called attention to the fact that as open party membership ebbs, more and more reliance is placed upon: 1, Underground leadership; 2, concealed members; 3, front groups; 4, fellow travelers; 5, Communist sympathizers, and 6, dupes.

As a result of the indictment of 109 Communist leaders, 72 of whom have been convicted, the hard core of leaders have now definitely gone underground; and where formerly one special agent of the FBI was

needed for proper coverage of 1 person, 9 or 10 are now required because of the greater security consciousness of the party.

William Z. Foster, in his book, Toward Soviet America, published in 1932, stated:

To escape the encroaching capitalist starvation and to emancipate themselves, the workers of the world, including those in this country, must and will take the revolutionary way out of the crisis. That is, they will carry out a militant policy now in defense of their daily interests and, finally, following the example of the Russian workers, they will abolish capitalism to establish socialism.

By the term "abolition" of capitalism, we mean its overthrow in open struggle by the toiling masses, led by the proletariat.

In a book published by Foster in 1952, he stated:

The Communist Party has laid the foundation for what will eventually be a powerful mass party in the United States. It has created a solid indestructible core of trained Marxists—Leninists. This is its most vital achievement of all. The party, its is true, is still relatively small, but like other Communist parties, it has the capacity for swift growth when the political situation demands it.

Through dupes, fellow travelers, and gullible leftists, the Communist Party is now carrying on a well-organized campaign of villification and attempts to discredit the FBI, congressional committees and public spirited citizens—all fighting attempts to reduce our citizenry to a vicious form of slavery under the Soviet Union. As the vicious corps of leadership is already largely underground, there no longer exists any reason for delay in outlawing an international conspiracy which has already enslaved so much of the world.

The American Legion hopes that this subcommittee will report favorably legislation to outlaw the Communist Party and any organization affiliated therewith, subordinate thereto or controlled thereby; and likewise any other organization having as one of its aims or purposes the overthrow or seizure of the Government of the United States or any of its political subdivisions by force and violence.

We further hope that such legislation will provide that any members of such organizations as above described, or any persons employed by, contributing to or participating in, the activities of any such organizations shall forfeit all rights of citizenship or to become citizens and that the law will also provide suitable penalties.

Thank you very much, Mr. Chairman, and members of the subcommittee. Will you incorporate the resolution?

Mr. GRAHAM. We will incorporate the resolution so the whole statement will include not only that of the statement of Mr. Pennington, but also the resolution adopted by the American Legion at their convention in St. Louis, August 31, 1953.

(The document referred to is as follows:)

1953 NATIONAL CONVENTION OF THE AMERICAN LEGION, ST. LOUIS, MO., AUGUST 31–SEPTEMBER 3, 1953

Resolution No. 356 (as amended).
Committee: Americanism.
Subject: Outlaw the Communist Party.

Whereas the present laws seeking to restrain Communists in the United States are inadequate to stop the Communists from their continued and continuing infiltration into the governmental, industrial, cultural, educational, and professional life of the Nation; and

Whereas commonsense, ordinary prudence, and a decent respect for the law of self-preservation dictate an immediate and complete dissolution of the Com-

munist conspiracy in America against democracy and the American way of life; and

Whereas the only completely effective way to dissolve the conspiracy, unearth the conspirators and punish the Soviet-controlled agents is to outlaw the Communist Party and all other similar conspiratorial organizations; now, therefore, be it

Resolved, by the American Legion in national convention assembled at St. Louis, Mo., August 31–September 3, 1953, That it does hereby respectfully urge that the Congress of the United States enact legislation within the framework of the Constitution of the United States, to outlaw the Communist Party or any organization affiliated therewith, subordinate thereto or controlled thereby; and any other organization having as one of its aims or purposes the seizure or overthrow of the Government of the United States or the government of any State or political subdivision thereof, by force and violence; and be it further

Resolved, That such legislation should further provide that any member of such organizations as above described, or any person employed by contributing to or participating in the activities of any such organizations, shall forfeit all rights of citizenship or to become a citizen, and to provide also suitable penalities therefor; and be it further

Resolved, That the national legislative director of the American Legion is hereby mandated to draft suitable legislation for submission to Congress to achieve the objectives stated herein.

Mr. GRAHAM. Mr. Hyde, are there any questions you wish to ask of Mr. Pennington?

Mr. HYDE. Mr. Pennington, does your organization direct its remarks toward any one of the particular bills before the committee?

Mr. KENNEDY. Mr. Hyde, we do not direct them toward any one of them. I have examined all of these bills. There are a great many of them. I do not know how many. I know most of them have been before your committee from time to time.

What we direct it to is more or less the principle contained. We appreciate the fact that your committee has a very difficult task to perform. I presume most of your troubles arise out of whether or not such legislation would be constitutional, if it would be upheld.

That problem has given us considerable thought and a great deal of trouble, I will be frank to admit. But to answer your specific question, Mr. Hyde, we have not directed it toward any particular bill.

We appreciate that every one of the sponsors of these bills are more or less of the same train of thought. There were some introduced in the Senate. Mrs. Smith of Maine introduced S. 200 several months ago and there have been some others. I examined also Congressman Dies' various bills. There are two or three of them, I think he put in in this session.

But on that question of constitutionality, I heard Mr. Justice Musmanno of the Supreme Court of Pennsylvania testify one day here. I have also read his brief, that is, the first one, the one that is 24 pages long. I have also read and we have given great consideration to the arguments advanced by the Attorney General, Mr. Brownell, in opposition to this legislation.

But I am inclined to agree with the statements contained in Judge Mussmano's memorandum or argument, as he calls it, where he refers to the question of constitutionality, especially on pages 9 and 10 and the subsequent pages of his memorandum, where he cites cases why he feels that such legislation would be constitutional and would be upheld by our appellate courts.

I frankly want to congratulate the judge on the fine presentation he made and say while we have every respect for the Attorney General,

I am inclined to rely on the cases set forth by Judge Musmanno in his brief.

For that reason we feel that there should be some way of working out this problem. The irony of this thing is that the first protection these Communists and their adherents seek is that they run right to the protecting folds of the American flag, the very flag they seek to destroy and tear down. That has been very ironical to me always. I have sufficient faith and confidence, and I am not being at all facetious—I want you to know this is said with all the seriousness I possess—we have sufficient faith and confidence in the ability of the ladies and gentlemen of this committee to work the problem out. No matter what we come out with along these lines, I want to assure you gentlemen without any qualification whatsoever that our organization will back you up 100 percent right down the line.

Mr. PENNINGTON. May I make a little further statement there in answer to Mr. Hyde? I have served on the national Americanism convention committee for a number of years. We have tried to keep away in that particular committee from indicating any specific bill pending in either the House or the Senate. Due to the fact that in the past we have been right embarrassed because the bill that we came out for was so changed when it reached its final form that it was not the bill that we discussed and reported favorably on out of this national convention committee.

So we have tried to keep away from that definitely, leaving it up more or less to the legislative division to work it out with the proper committees of the Congress.

Mr. GRAHAM. Mr. Pennington, if I may interrupt, Mr. Walter's theory is this, that we should not name the party by name, but cite the acts and actions so that if it comes up under any other name, the conditions will be met at that time.

That is one of the things that impressed me personally about naming the parties as a party. Mr. Walter and our staff worked on this. These other bills name the party, particularly Mr. Dies' bills and a number of others. I wanted you to keep that in mind.

Mr. KENNEDY. I should have mentioned that, Mr. Chairman. I meant to. I am sorry I inadvertently overlooked it. I appreciate the fact that all these fellows will have to do is change the name of Communist Party to something else the next day. In our resolution, in the first "Resolve" clause, it says—

to outlaw the Communist Party or any organization affiliated wherewith, subordinate thereto or controlled.

In other words, any in the same category, whether they call themselves the Communists, the IWW's, or what have you, as long as they advocate the overthrow of the American Government.

Mr. WALTER. That language does not do that at all. It is all predicated on association or connection with or being subordinate to the Communist Party.

Mr. KENNEDY. Are you referring to the language of the resolution, Mr. Walter?

Mr. WALTER. Yes.

Mr. KENNEDY. I can tell you, Mr. Walter, it is not the intention to confine our opposition to the Communist Party solely. We will sup-

port any legislation which will outlaw the Communist Party or any similar party by whatever name it may choose to call itself. I can see now that the thing could well have been made a little bit broader, but it is all inclusive. It is all embracive. That is the intent behind it, not necessarily to confine it. I know that some of these bills, with all due respect to the gentlemen and ladies who introduced them, do name the Communist Party and the Communist Party alone. I think that was probably an oversight on their part, that they intended to outlaw not only the Communist Party but any other of the same ilk.

Mr. WALTER. In the Legion monthly there is a piece concerning this subject discussing the Dies bill. I am inclined to believe that that comes as a result of the first "resolve" clause in which it is stated:

outlaw the Communist Party, or any organization affiliated therewith, subordinate thereto, or controlled thereby.

That just runs afoul of the thing concerning this. I would like to ask Mr. Pennington, in the last sentence of your statement, what is added to existing law? You say:

We further hope that such legislation will provide that any member of such organization as above described——

Mr. GRAHAM. Mr. Walter, if you will pardon me for a minute in order for me to clarify the situation; Mr. Pennington, before you answer, I would like to read to you the bill introduced by Mr. Walter which is very clear and explicit. Will you carefully listen as I read this to you?

Mr. Walter writes:

That chapter 115 of title 18, United States Code, is amended by adding at the end thereof the following section:

"PARAGRAPH 2391. Advocating the establishment of totalitarian dictatorship.

"Whoever organizes, or assists or attempts to organize, or knowing the purposes thereof, becomes or is a member of, or affiliates with any society, group, party, organization, or assembly of persons which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism characterized by—"

Then he goes on with definitions and the penalties and so forth.

You will notice in reading there is no mention of the Communist Party, but the acts are pointed out by which it can be determined and known what they are advocating—that is the overthrow of our Government. I want you to have that in mind as you answer this question of Mr. Walter.

Mr. WALTER. That is the very thing that has disturbed those of us who have been trying to render more than lip service in this field. Under the Smith Act, so-called, what you urge in the last sentence of your statement is already in the law. Then as far as the forfeiture of the rights of citizenship, conviction under this section is a felony and of course felons lose their rights of citizens, so that is taken care of.

Then the last, "or to become citizens." Of course under the immigration and nationality code, a person who is affiliated with or is a member of and so on could not become a citizen. So what you are urging adds nothing to the existing law at all; does it?

Mr. PENNINGTON. Mr. Walter, under those circumstances if that is already existing law, may I ask leave to strike the last sentence from that statement?

Mr. WALTER. I do not think you ought to strike it. I think it ought to be a part of the record.

Mr. PENNINGTON. That is all right by me. But if it is existing law——

Mr. WALTER. That is in my judgment, I am not sure.

Mr. PENNINGTON. I am not either.

Mr. WALTER. I am asking you what you intend to add to existing law?

Mr. PENNINGTON. What we are trying to do there is cover every possible avenue whereby we can forestall any activities on the part of this group of individuals. If I have stepped over the bounds, and there is already existing legislation, I certainly am not going to take any exception—I know Mr. Kennedy is not—to the action of this committee in their recommendations.

Mr. GRAHAM. You can now realize the very difficult problem that confronts this subcommittee.

Mr. PENNINGTON. We realize that, sir.

Mr. GRAHAM. We have given a great deal of thought to this matter, and will continue to do so. To be perfectly frank with you, there is some difference of opinion among other people as contrasted with our own. But we are all seeking the same end, and that is how to provide for the security of the United States.

That is exactly what Mr. Walter had in mind. Mr. Walter is probably the most able and competent man we have on this side of the Congress. He is one of the authors of the McCarran-Walter Act and contributed to the problem more than any other man. He has served on the Committee on Un-American Activities. He has a long record of personal bravery and courageous service in the Armed Forces of the United States.

So he comes and speaks with the knowledge which many of us do not have. While I have been on this committee for 8 years, I am frank to say that Mr. Walter knows far more than I do about this matter. Mr. Hyde has recently come with us. But we want to be guided by those who really are in a position to advise us correctly and rightly in the matter.

Mr. WALTER. Mr. Chairman, you embarrass me because I am not an expert. That is why I have been asking these questions.

But, Mr. Pennington, the Attorney General of the United States testified against this proposal. If I was a partisan, I would immediately start waving the flag and making the eagle scream and have all the patriotic organizations back of me for the purpose of embarrassing a Republican Attorney General.

But I am not built that way. I think there is much in what he says. I suggested to him that perhaps the way to determine whether or not this language was adequate was to prosecute somebody, just a member. He has got a list of members, as you well know. They are in the files of the Committee on Un-American Activities. We can furnish the Attorney General or some United States attorney with the names of people who were carrying a Communist Party card yesterday, perhaps.

It may well be that the Attorney General will pick out two cases, one for the purpose of depriving a person of his rights as a citizen. That was something the President advocated. Then to take an alien

and prosecute him and deport him. I am not so certain that legislation is necessary.

Mr. PENNINGTON. Mr. Walter, I think one thing behind the Legion's position has been that they are very much perturbed over individuals like Harry Bridges getting their cases up to the Supreme Court. We know that the man is one of the most dangerous individuals in this country. I really think in discussing it in the committee, that some of the thinking behind some of the matters in the resolution was based on the fact that individuals such as Harry Bridges have been able to remain in this country through existing laws and carry on their nefarious activities.

Mr. WALTER. It is not the fault of the law. It is the fault of the administrators. I know of a judge who grants one writ of habeas corpus after another in cases where people ought to be deported, only because under his philosophy nobody ought to be deported from the United States, no matter what they did.

I am not so certain—and this is something that the watchdog committee of immigration at some time or another is going to talk about—that a man who has enough money can ever be deported, because I do not know that there is finality to finding a writ of habeas corpus, as shocking as that may sound to you two distinguished lawyers.

But suppose that an alien under a deporation order goes to Judge A in Philadelphia with a writ of habeas corpus, and there is a hearing. The judge denies the writ. Then he goes to Judge B, in Camden, N. J., and he denies the writ.

Then he goes to Judge C, in Newark, N. J., and he denies the writ. Then he goes to Judge D in the southern district of New York and he grants the writ.

By that time everybody is exhausted and the alien dies of old age, but he has not been deported, even though he has committed two felonies. That is a dreadful situation.

Mr. GRAHAM. Anything more, Mr. Pennington?

Mr. PENNINGTON. That is all, thank you.

Mr. GRAHAM. Anything more, Mr. Kennedy?

Mr. KENNEDY. No, thank you, Mr. Chairman.

(Discussion off the record.)

Mr. GRAHAM. Then under those circumstances, we will adjourn the meeting subject to call by the Chair.

(Whereupon, at 10:50 a. m., the committee adjourned, subject to convene on call by the Chair.)

INTERNAL SECURITY LEGISLATION

WEDNESDAY, JUNE 23, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:40 a. m., pursuant to adjournment, in room 346, Old House Office Building, the Honorable Louis E. Graham (chairman of the subcommittee) presiding.

Present: Representatives Graham (chairman), Thompson, Hyde, Celler, and Walter.

Also present: Walter M. Besterman, legislative assistant; William R. Foley, committee counsel; and William P. Shattuck, assistant committee counsel.

(The following bill was referred to the subcommittee since its last meeting:)

[H. R. 9502, 83d Cong., 2d sess.]

A BILL Declaring the Communist Party and similar revolutionary organizations illegal; making membership in, or participation in the revolutionary activity of, the Communist Party or any other organization furthering the revolutionary conspiracy by force and violence a criminal offense; and providing penalties

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon evidence which has been presented and proof which has been established before the Congress of the United States and the courts of the United States, there exists an international revolutionary Communist conspiracy which is committed to the overthrow by force and violence of the Government of the United States and of the several States, such conspiracy including the Communist Party of the United States, its various components of affiliated, subsidiary, and frontal organizations and the members thereof.

SEC. 2. The Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations and all other organizations, no matter under what name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are hereby declared illegal and not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party, its various components of affiliated, subsidiary, and frontal organizations and other organizations with the same revolutionary purposes, by reason of the laws of the United States or any political subdivision thereof, are hereby terminated.

SEC. 3. Whoever, therefore, being a member of the Communist Party of the United States or any affiliated, subsidiary, or frontal organization thereof, or any other organization, no matter how named, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force or violence, knowing the revolutionary object or pur-

pose thereof; or whoever participates in the revolutionary activities of the Communist Party or any affiliated subsidiary or frontal organization thereof, or any other organization with the same revolutionary purpose, knowing the revolutionary object or purpose thereof, is guilty of a Federal offense, and, upon conviction thereof, shall be sentenced to imprisonment for not exceeding ten years or fined not exceeding $10,000, or both.

SEC. 4. In determining membership or participation in the Communist Party or any other organization defined in this Act, the jury, under instructions from the court, shall consider evidence, if presented, as to whether the accused person:

(1) Has been listed to his knowledge as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

(2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form:

(3) Has made himself subject to the discipline of the organization in any form whatsoever;

(4) Has executed orders, plans, or directives of any kind of the organization;

(5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;

(6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;

(7) Has been accepted to his knowledge as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;

(8) Has written, spoken, or in any other way communicated by signal, semaphore, sign, or in any other form of communication orders, directives, or plans of the organization;

(9) Has prepared documents, pamphlets, leaflets, books, or any other type of publication in behalf of the objectives and purposes of the organization;

(10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others material or propaganda of any kind in behalf of the organization;

(11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;

(12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;

(13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;

(14) The enumeration of the above subjects of evidence on membership or participation in the Communist Party or any other organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

(15) In every instance where the word "organization" is used in this section, it shall include the Communist Party of the United States and its various components of affiliated, subsidiary, and frontal organizations.

SEC. 5. This Act shall take effect upon the expiration of thirty days after the date of its enactment.

Mr. GRAHAM. The committee will come to order. The Chair will make a preliminary statement. We have scheduled for today the United Electrical, Radio, and Machine Workers of America, the Emergency Civil Rights Congress, and Justice Michael A. Musmanno, of the Pennsylvania Supreme Court.

The first thing before us is a statement of the United Electrical, Radio, and Machine Workers. First a press release and then a 27-page statement, and then a brief of the law.

We must be on the floor at 12 o'clock. Any business transacted after that is not legal.

May I make this suggestion, in order that all can be heard. In the event that this long statement can be summarized, it would help greatly. If not, we will place it in the record. Who represents the United Electrical, Radio, and Machine Workers of America?

Mr. NIXON. Mr. Chairman, I am Russ Nixon, the Washington representative of the United Electrical, Radio, and Machine Workers of America. Your suggestion is entirely satisfactory with me, and if you had not made it, I would have—that the full statement go into the record and that I be permitted to summarize extemporaneously the contents of our argument.

Mr. GRAHAM. Mr. Nixon, that will permit the other people who are present to be heard. Thank you.

Mr. NIXON. Thank you, sir.

(The document referred to is as follows:)

STATEMENT OF UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS OF AMERICA (UE) IN OPPOSITION TO BROWNELL-REED BILLS, HOUSE JOINT RESOLUTION 527 AND HOUSE JOINT RESOLUTION 528 TO PROVIDE GOVERNMENT LIQUIDATION OF SELECTED ORGANIZATIONS AND GENERAL BLACKLISTING OF WORKERS

Presented to the House Judiciary Committee by Russ Nixon, UE Washington representative, June 23, 1954

This statement is presented on behalf of the United Electrical, Radio, and Machine Workers of America (UE), a labor union which has been democratically chosen to represent more than 300,000 workers in the electrical, radio, and machine and farm-equipment industries of America.

The UE, together with the rest of the labor movement, is in opposition to House Joint Resolution 528, the proposed Communist Infiltrated Organizations Act, and House Joint Resolution 527, the proposed Defense Facilities Protection Act, which are now before the House Judiciary Committee for consideration. These bills comprise a major legislative proposal of the administration and were introduced in the House by Representative Reed, of Illinois, at the request of the Attorney General of the United States, Herbert Brownell, on behalf of the administration.

The UE appears in opposition to these bills because of the deep and growing concern of our membership for the security, welfare, economic health, and political freedom of our country which we consider are gravely menaced by these bills you are now considering. The views of the UE have been democratically developed in innumerable union meetings and expressed in repeated policy resolutions of our locals, districts, and international conventions.

The UE has previously appeared before other committees of Congress in opposition to a wide range of legislative proposals designed to curtail the right of working people to choose their own unions and their own leadership, to adopt the union program and policies which appear to them to be necessary for the advancement of their interests, and to enjoy complete individual political freedom. Although the bills recommended by Attorney General Brownell are basically similar in purpose and character to the Butler-Miller, Goldwater-Rhodes, Velde, McCarran, and other pending bills upon which the UE has previously presented testimony, we do not intend to repeat that testimony here. It is available to this committee and we urge that it be given most careful consideration before action is taken on the related measures, House Joint Resolution 527 and House Joint Resolution 528.

I

In considering these Brownell proposals, Congress is called upon to make an extremely grave decision of far-reaching and unprecedented import, fundamentally affecting the elementary rights and liberties of the American people.

What is it that Congress is asked to do in these two proposad bills? Congress is being asked to repudiate the traditional democratic principles of freedom of expression, free association, government by law rather than by men, the doctrine that guilt is personal and not due to associations—principles upon which our American free society has been based since 1789. You are being asked, instead of preserving these rights, to give appointed Government officials the power to liquidate free associations; to censor and punish individuals for their own political views as well as those of their associates; and thus to impose a reign of censorship, repression, and fear upon the American people. You are being asked to destroy the right of workers freely to choose their unions and their union officers; thus to destroy the freedom of the American labor movement by taking its control

from the working people and placing that control in the hands of bureaucrats appointed by Government.

You are being asked to substitute fascism for American democracy.

Briefly summarized, these bills provide: House Joint Resolution 528—A bill to provide machinery to liquidate Communist-controlled organizations which are in a position to affect adversely the national defense or national security.

Under this bill the Attorney General and the majority of the members of the Subversive Activities Control Board, using undefined, subjective, and political tests, may label any organization in the country "Communist infiltrated" and compel "the expeditious dissolution, liquidation, and winding up of [its] affairs." The standards by which this death-sentence label is to be applied are tailormade to fit the political and economic bins of the four Government appointees necessary for the decision. The death-sentence tests rest upon guilt by association; the political views and associations of the organization, its members and its leaders; and upon imponderable judgments about the meaning of phrases such as "the extent to which," "substantially directed," etc. Immediately following the SACB agency decision and prior to any appeal the organizational death sentence is to be carried out through the prohibition of any individuals listed as proscribed from further relationship to the organization.

This, together with special penalties directed at trade unions, simply means that to exist a union must in effect have a license from four Government bureaucrats, whose approval is also necessary before a person can be an officer or representative in any capacity of any union. The rule of these four Government officials would supplant the democratic choice of all American workers in the selection of their unions and their union leadership.

House Joint Resolution 527: A bill to authorize the Federal Government to guard strategic defense facilities against individuals believed to be disposed to commit acts of sabotage, espionage, or other subversion.

This bill would authorize the President of the United States, at his absolutely free discretion, to apply as a requirement for employment in virtually all American industry vague political tests based on no intelligible standards, guides, or criteria. In actual effect this would permit a national blacklist, administered by the Federal Government in coordination with employers. This political screening would apply to workers without regard to their type of work, the limits of its application being solely within the discretion of the Secretary of Defense. The general application of these screening blacklist tests is permitted whenever the President believes that the "security of the United States is in danger," among other reasons due to "subversive activity" or "disturbance or threatened disturbance" of the international relations of the United States. (A detailed legal analysis of these bills is submitted for the record at this point.)

Thus in House Joint Resolutions 527 and 528 Congress is asked to end freedom of speech, press, advocacy, and association, to establish the principle of guilt by association and political opinion, to impose thought control, and to end the freedom of the American labor movement. Together with repressive legislation and practices already in effect, House Joint Resolutions 527 and 528 would complete the legislative package that can only be correctly described as the enabling legislation for the establishment of fascism in the United States.

If this seems to be an extreme observation, I request you to consider carefully the following document which is the official United States Government translation of the first basic Nazi decree abrogating essential features of the democratic Constitution of Germany:

[Reichsgesetzblatt (German Bulletin of Laws), 1933, pt. I, p. 83]

"DECREE OF THE REICH'S PRESIDENT FOR THE PROTECTION OF THE PEOPLE AND STATE, FEBRUARY 28, 1933

"In virtue of paragraph 2, section 48, of the German Constitution, the following is decreed as a defensive measure against Communist acts of violence, endangering the state:

"SECTION 1

"Sections 114, 115, 117, 118, 123, 124, and 153 of the constitution of the German Reich are suspended until further notice. Thus restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly, and the right of association, and violations of the privacy of postal, telegraphic, and telephonic communications, and warrants for house-searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed.

"SECTION 6

"This decree enters in force on the day of its promulgation.
"Berlin, February 28, 1933.

"Reich's President VON HINDENBURG.
"Reich's Chancellor ADOLF HITLER.
"Reich's Minister of the Interior FRICK.
"Reich's Minister of Justice GURTNER."

(Official translation, U. S. Department of State Publication No. 1864, National Socialism (1943) p. 215.)

We believe that the proposals advanced by Mr. Brownell raise questions so fundamental to the continued existence of the United States as a free Nation, so far-reaching in their effects upon the future lives and welfare of all Americans, as to require the gravest and most deliberate scrutiny and consideration and the broadest public discussion. It seems to us inconceivable that any responsible government could propose such measures so fundamentally altering the relationship of the American Government to its citizens as if it were a minor matter of police regulation to be adopted hastily by Congress in the rush of a session's closing days.

Consequently, we urge this Judiciary Subcommittee to reconsider your intention to terminate these hearings after only 2 half-days of testimony, and urge that full and adequate hearings be arranged. This would require the author of the legislation, Attorney General Brownell, to appear before the committee to discuss the bills he proposes; it should include other representatives of the administration whose affairs are vitally affected, such as the Secretary of Labor and the Secretary of Defense; it would seem imperative for adequate consideration that the testimony of the American Federation of Labor and the Congress of Industrial Organizations, church groups, publishing groups, civil-liberties organizations, constitutional authorities, and the American bar, etc., should be arranged. Anything less than this creates a situation in which profound and far-reaching legislation will be considered without the usual procedures of adequate hearings and discussion.

At the outset of our testimony we wish to direct the committee's most serious attention to this historical fact—that no people which yields any measure of its fundamental freedom to its government, investing that government with despotic, totalitarian power, has ever been able to regain that freedom by simple, easy, democratic means. We urge you, in pursuance of your oath as Congressmen, to "support and defend the Constitution of the United States against all enemies," to make sure that the people's freedoms are held inviolate against attacks such as are contained in these bills urged upon you by the Attorney General.

II

The general public is told by the administration that the reason Congress is being asked to outlaw the free labor movement, shatter basic constitutional rights of the people, violate our sacred traditions by establishing political screening and blacklisting of all American workers, is because such extreme measures are required to protect our national defense and security from acts of espionage, sabotage, and subversion. Thus, President Eisenhower, in his address to the Nation on June 10, 1954, urging the adoption of the legislation, spoke of the necessity to protect the country against subversive activity and to catch spies and saboteurs. The sponsor of this legislation in the Senate, Senator Homer Ferguson, chairman of the Senate Republican policy committee, speaking at the Waldorf-Astoria Hotel to a conference of magazine editors and educators on June 16, frankly conceded the antidemocratic nature of these proposals and excused this proposed step in the following words:

"It is a contradiction of human existence that people who love freedom must take means that appear to be against all our traditions in order to protect ourselves from the few rotten apples that exist in our midst.* * * I regret to tell you I believe such a security program is essential. It is a deplorable aspect of our times, particularly deplorable because it goes contrary to our nature and traditions. * * * We are groping along paths unaccustomed to most Americans. * * *"—New York Times, June 17, 1954.

The author of the legislation, Attorney General Brownell, justifies his proposals as being directed at persons who "may be reasonably believed to be disposed to commit acts of sabotage, espionage, or other subversion." As the propagandists of these extreme antidemocratic measures present these justifica-

tions to the public, the alleged targets become simply spies and saboteurs with all reservations and pseudo safeguards dropped in a desperate propaganda effort to convince the American public that they must give up their own freedoms.

Advocates of this legislation take the position that existing police protections and plant-security methods are inadequate to protect the Nation from espionage and sabotage. They take the position that the FBI and the security officers and system of the Armed Forces are unable to protect the country against criminal acts of sabotage, espionage, or subversion.

We directly challenge the assumption that these antidemocratic bills are necessary to protect our Nation from either actual or potential actions of espionage, sabotage, or any other criminal attacks on the security of our Nation.

National public policy must be based upon facts, the record of actual events. It would be irrational, and for Congress it would be irresponsibility of the highest degree, to base public policies abrogating our traditional liberties upon speculation, vague fears, and imaginings unsupported by any record of facts. No matter how bitterly one may oppose and perhaps fear communism and Communists, the application of this test of fact is still the essential mark of rationality and strength.

Inasmuch as House Joint Resolutions 527 and 528 are aimed primarily at workers and their organizations, the record in this area is particularly significant. One can search the records of all the investigating committees, all the Government reports, all the testimony of antilabor companies, all the results of all the forces hungry for evidence to support their tales of espionage and sabotage, and yet this fact remains: There has not been a single verified instance of union-connected sabotage or espionage in any industrial establishment in America within our recent history. This fact holds true for unions of varied political views and holds true during periods of varied political and international circumstances.

Keeping in mind that the author of the legislation before you has publicly attacked various unions as targets for liquidation under this legislation, keeping in mind the fact that these unions have operated in vital areas of American production during the entire period, it is significant to recall that there has been no single instance of sabotage, espionage, or subversive interruptions of production during the period of the Soviet-Finnish war, the Nazi-Soviet Pact, during World War II, during any phase of the so-called cold war including the Korean conflict, and our military supply support to the French forces in Indochina. This unqualified record shows how utterly groundless are the proposals to arrange the bureaucratic liquidation of various trade union organizations on the basis of potential danger of sabotage, espionage, or criminally subversive attacks on the security of the country.

An example of specific verification of this record is found in the case of the officials of the General Electric Co. who have repeatedly appeared in the past 3 years before congressional committees to urge legislation to outlaw unions and to permit companies to blacklist employees because of their political beliefs. In these hearings these company officials have been challenged to cite instances of espionage or sabotage in their own plants which are deeply involved in military production. Without a single exception the General Electric Co. has been unable to cite such instances and have in fact been required to acknowledge that there were no such instances. Even so, the excuse given by these corporate representatives seeking the enactment of legislation such as that before you now was the same pretended fear of wrongdoing by their workers as is advanced to rationalize the antidemocratic legislation now before you.

Mr. W. J. Barron, labor relations counsel for the General Electric Co., testifying before the Subcommittee on Labor and Labor Management Relations of the Committee on Labor and Public Welfare of the United States Senate, 82d Congress, on Tuesday, July 8, 1952, said: "There has not been a single instance of a G. E. employee who has worked in our atomic energy operations who has been found to have engaged in espionage there." Mr. Barron could have extended that statement to cover every operation of the General Electric Co. and to include sabotage and subversive interruption with production as well as espionage.

Mr. Lemuel R. Boulware, a vice president of the General Electric Co., testifying before the House Committee on Education and Labor on May 6, 1953, when questioned about the danger of espionage by their employees, belittled this possibility saying, "* * * individual workers work on very small individual components of a whole thing, and they rarely even know what the product looks

like or what the purpose of it is. * * * It would take 1,000 employees seriously to get at this thing."

When hard pressed by the complete lack of evidence to support the sabotage-espionage excuse for legislation to permit governmental authorities to outlaw unions and blacklist workers, a pretended fear of political strikes is often advanced. This goes far to expose the actual antilabor objectives of the restrictions proposed on labor, and at the same time examination of the record reveals that this pretext, too, is as groundless as the fear of sabotage and espionage. G. E. Vice President Boulware testifying on July 8, 1952, before the Senate subcommittee referred to above, gave the following answer to a direct question by Senator Hubert H. Humphrey:

"Senator HUMPHREY. Do you think we have had any political strikes in the past few years, I mean since Korea?

"Mr. BOULWARE. I don't know of any."

As if to underline the flimsiness of the case for laws to deprive unions of the rights to choose their own unions and union leadership, on the basis of, among other things, subversive political strikes, reference is frequently made to 2 strikes conducted by the United Automobile Workers, CIO, at the North American Aviation Corp., and the Allis Chalmers Corp. during the period of the Nazi-Soviet Pact. Thus, for example, in a document entitled "The Republican in Pursuit of American Communists," prepared by the staff of the Senate Majority Policy Committee to justify the Brownell proposals you are considering (supplement to vol. II, No. 18 of Senate Majority Memo, May 6, 1954) it is declared:

"What a Communist-dominated union can do—and has done—in a crisis is not an academic question. From August 1939 until Hitler's invasion of Russia in June 1941, that Nazi-Soviet Pact was in force and Communist policy was to obstruct free armament in any way possible. In one move to block armament manufacture the United Automobile Workers—then under Communist control—precipitated the Allis Chalmers strike in Milwaukee. The strike leader was Harold Christoffel. The strike itself was drawn out for 10 weeks (January 22–April 7, 1941) and engendered a bitterness that was intense and long lasting. It was a political strike and it was ruthlessly managed. In the end, the strike collapsed, but meanwhile there was a 10-week stoppage that held up rearmament."

What a commentary it is on the merits of this legislation, that in its search of the record the Republican Senate Majority Policy Committee's staff was able to come up with but 1 strike, 13 years ago, by 1 local union in 1 plant of 1 company. Most significant is the fact that this strike, now cited on highest authority as justification to end the freedom of the labor movement, was in fact not a political strike but actually was caused by the refusal of the Allis Chalmers Co., one of the most bitterly, notorious antilabor corporations in America, to take action on the grievances and the collective bargaining demands of the workers.

In testimony before the House of Representatives Committee on Labor on March 1, 1947, R. J. Thomas, then UAW president and now CIO assistant director of organization, said:

"Up until 1941 the company used a very subtle tactic of union busting. It delayed indefinitely and many times refused flatly to discuss or settle any grievances raised by the union. This situation created such ill feeling among its employees that production was hampered.

"The company also refused to grant its employees any wage increases although by 1941 it was already going into its high-profit war years.

"On January 21, 1941, after the great majority of the union's membership voted to leave the plant the union called a strike.

"Immediately after the strike was called the company raised a great hue and cry and said the union was sabotaging preparation for national defense. Exactly who was sabotaging national defense is borne out by the fact that at this same time Max Babb, president of the company, was heading the Milwaukee chapter of the America First Committee."

The record of the strike negotiations shows that the Government on March 1, 1941, had submitted a proposal for the settlement of the strike. The strikers accepted this proposal, but company officials, after accepting it in Washington, rejected it upon their return to Milwaukee.

The CIO's President Philip Murray stated in a telegram to OPM Director General Knudsen and Secretary of the Navy Knox:

"Under date of March 1, Mr. Hillman and you submitted to the Allis-Chalmers workers a proposal with the understanding that, if accepted by them, you would also insist upon its acceptance by the company.

"The Allis-Chalmers workers accepted your program. The company refused. "Since then the workers have come to regard the Allis-Chalmers situation as a lockout."—CIO News, March 31, 1941.

UAW Secretary Treasurer Addes sent this wire to Knudsen and Knox:

"Are you cracking down on the men because you want to truckle to a management that is sabotaging national defense?"—CIO News, March 31, 1941.

Allan S. Heywood, then CIO director of organization, supported the strikers and said the blame for the strike rested with the company.

It is worth nothing in connection with labeling of this strike as political and subversive by the Republican Majority Policy Committee staff, that the president of the Allis-Chalmers Co., at the time of the strike, Mr. Max Babb, was head of the Milwaukee chapter of the America First Committee.

Examination of the facts of the other often cited strike by the UAW-CIO at the North American Aviation Co., similarly would reveal that the strike was based on real grievances over the wages and working conditions. Both strikes, moreover, occurred at a time when the United States was not directly involved in the war. Yet this is the so-called record of political strikes upon which it is sought to justify legislation that would outlaw the free labor movement and deprive the American workers of the rights of freedom of assembly, association, and political opinion.

The reference to potential acts of espionage, sabotage, and criminally subversive attacks on our security thus has no solid background of fact. Actually the record shows that precisely during periods of international contraversy and tension during which such dangers would allegedly develop, there have been no examples to be cited. Moreover, the shift from attention to criminal acts against the security of the country to potential acts introduces a totally un-American practice of putting the Government in the business of reading people's minds, imposing thought control, basing judgments on intentions, and applying death sentences to organizations on the basis of vague subjective political evaluations. This, of course, by moving from acts to potentialities moves the Government into the destruction of valued civil liberties. It is this consideration among others which led the Wall Street Journal in a significant editorial comment on the Brownell proposals to state:

"As we see it, the trouble with Mr. Brownell's bill is that he here seeks not to expose organizations or to punish people for what they have done, but to punish people for what they might be in a position to do. * * * Mr. Brownell's bill contains no safeguard. Indeed, it would have been most difficult to make reference to the Bill of Rights and then attempt to do what this measure suggests.

"We recognize the trying task the Attorney General and his law officers face in combating the secret and sinister Communist intrigue. But it is not the part of wisdom ourselves to chip away at the very rights we seek to save from this menace."—Wall Street Journal, June 1, 1954.

Indeed, in consideration of this legislation employers are seeking to impose upon workers and their trade unions, some might suggest that the record of American corporations insofar as alleged acts of subversive attack upon national security are concerned, are proper subject of evaluation. If such a test were to be applied it would bring to light many instances of specific American corporate actions damaging the security of the Nation. When one notes the attack against all labor unions based upon the UAW-CIO Allis-Chalmers and North American strikes just prior to our entry into World War II, what will one say about the official Federal Government decisions finding the General Electric Co. guilty of cartel arrangements with Krupp aiding Nazi military production to the disadvantage of the United States, the cartel agreements of the Sperry Gyroscope Co., Inc., Bendix Aviation Corp., and the American Bosch Corp. by which the Nazi Government furthered its military aircraft production and restricted this production in America?

How would one evaluate the facts, confirmed by court action and the imposition of penalties (albeit a slap-on-the-wrist scale) of the faulty production of copper cable by the Anaconda Copper Co. during World War II endangering the lives of American servicemen; and the faulty production of aircraft motors by the Wright Aircraft Corp.—actions carried out in relentless pursuit of profit. How will one evaluate the unquestioned record documented by the Truman Senate investigating committee, of the actions of major American corporations such as General Motors, General Electric, Westinghouse, etc., delaying conversion of their productive facilities from civilian to military production after Pearl Harbor?

If the reasoning of the Brownell bills before you to the effect that organizations should be liquidated and traditional American liberties terminated because of potential risks of actions against the national security is to be accepted, is there not the possibility that someone will make a case much more based on fact and experience, alleging that there is a predisposition on the part of American corporations to commit acts against national security warranting the liquidation of corporations and a type of screening by the Government of all industrial, business, and financial executives?

In suggesting this question might be raised, we do not support such an approach whether it is to workers or to employers. The widespread dangers and implications of this un-American approach, however, should be well marked. In the case of corporations, of employers as well as unions and workers, the cherished American principles of freedom and punishment for criminal acts and not for views or intentions are the only ones that should be applied by this Congress.

We believe that this fact should be clear to this committee: There is nothing in the record in the United States that justifies any reasonable expectation of sabotage, espionage, or other criminal attacks on our national security which existing law and law-enforcement facilities are not competent to handle. Certainly there has been no evidence to the contrary put into the record of these hearings. Why then is this far-reaching un-American legislation being so powerfully pressed and with such haste? We submit to this committee that the legislation has another aim than its stated one—but the stated purpose of protecting the security of the United States is a subterfuge and a fraud—but the real purpose of the Brownell bills is precisely what their effect would be, to give reactionary corporate employers a weapon to smash unions, to blacklist workers, to outlaw in this country any form of political expression that does not meet with the approval of organized big business and its representatives in Government.

III

Not all the proponents of this legislation are as honest as Senator Ferguson who, as he has already been quoted in this testimony, admits that this legislation goes "against all our traditions." In contrast to this candid admission by the sponsor of this legislation in the Senate and the chairman of the Senate Republican policy committee, President Eisenhower in his nationwide broadcast urging adoption of these bills told the people of the United States that:

"All of this internal-security legislation adds up to a potent package of protection against communism, without in any degree damaging or lessening the rights of the individual citizen as guaranteed by our laws and the Constitution."

This unequivocal statement presents a real problem of characterization to anyone who is inclined to hold the office of President in very high respect. Perhaps it is best to let the friends of the President characterize this statement, since the alternatives are narrowly limited to ascribing it either to ignorance or to dishonesty.

The issue before this committee can be genuinely debated along the lines suggested by Senator Ferguson, whether or not national security considerations justify these unusual, untraditional and antidemocratic legislative steps. There can be no really honest debate as to whether the legislation would curtail liberties, as even a cursory examination of the legislation itself makes absolutely clear that this would be the result. Preservation of liberty for American citizens must mean protection of their freedom to aggressively advocate, to organize for the political realization of policies related to the great issues of these times. Freedom to speak, to read, to write, to think, to engage in political activity and in political and economic associations must be free of any governmental limitation and must at least be free of any governmentally sponsored economic discrimination.

This liberty must apply to the most controversial and bitterly contested issues in the current national and international economic and political situation. Preservation of liberties for our citizens must mean for example, preservation of their freedom to criticize as well as to uphold our foreign policy, to advocate and organize for a policy that would bring about diplomatic recognition of and admission to the United Nations of the Chinese People's Republic, withdrawal of our support to the French forces in Indochina, opposition to support for the attack on the established Government of Guatemala. Genuine liberty must leave our people free and protected in their right to advocate and organize to gain

support for a policy of coexistence and even friendship with the Soviet Union and the other Socialist countries of the world. It must mean unhampered freedom to wage an aggressive fight to win equal rights for minorities of this country, to protest within the bounds of law and order against what may be considered to be miscarriages of justice such as in the cases of Willie McGee in Mississippi and the Trenton Six in New Jersey. A free American must be safe and unhampered if he chooses to advocate a program of militant struggle to win gains for the workers, to oppose legislation and legislative activities deemed to be contrary to the interests and welfare of the country. The protection of our liberties must blanket all of these views and activities even though they may most profoundly be opposed by the majority influence in America. If the market place of ideas is to be truly free, if our political life is to be truly that of liberty, then the unrestricted right of advocacy on burning issues such as these must be fully protected.

If we so define liberty—and it cannot really be defined otherwise—it cannot be maintained that the Brownell proposals do not gravely undermine the liberties of the people.

The real aims and extent of this type of repressive legislation is not hard to discern. The outspoken advocates of extreme reaction in big business and in public life have clearly expressed their contempt for American freedom and have indicated the extreme to which they would proceed under such legislation as Mr. Brownell has sponsored.

For example: Mr. H. W. Prentiss, ex-president of the National Association of Manufacturers, and a member of the Personnel Security Review Board of the Atomic Energy Commission has declared:

"American business might be forced to turn to some form of disguised fascistic dictatorship" (N. Y. Times, November 29, 1938).

Senator Joseph McCarthy gave his version of the scope of ideas permissible to Americans when he designated the entire period of the New Deal and Fair Deal as "20 years of treason." More recently he has further narrowed his definition of loyalty by extending his definition of treason to include the first year of the Eisenhower administration.

Alongside of such expressions as these there is often advanced today a milder-seeming but equally dangerous argument against the exercise of American freedom. It is directed to people of somewhat moderate or liberal views, with a deep and sincere regard for our traditional liberties, whom reaction wishes to frighten and cajole into yielding.

This argument runs, "Mr. Brownell's proposals are distasteful, yes, but not too dangerous. He will not outlaw more than a few organizations that you don't like anyway, and won't condemn to hunger more than a few thousand workers' families that you don't even know."

The blacklist, bill, House Joint Resolution 527, itself attempts to advance this reassurance to the doubtful, saying in section 2, (2) "There exists in the United States a limited number of individuals, etc., etc." against whom the bill is ostensibly directed.

What can this be but an attempt to sweeten the smell of a blacklist with an attempt to convey the impression that it will not harm too many? Let's consider specifically the argument that the Brownell proposals, if adopted, will be administered with restraint, in a manner calculated to do small damage to American principles of liberty and democracy.

In the first place, we must reject the idea that a small number of outlawings of organizations, or a small number of blacklistings, would have a small effect. The outlawing of even 1 union or 1 organization would have the most far-reaching coercive effect upon all others. We have previously pointed out that once Government is given power to prescribe what shall be permitted policy, every organization must accept policy laid down by employers and politicians as acceptable as a condition for existence. Similarly the blacklisting of one employee in any plant or community serves better than anything else could do to coerce and intimidate all other employees.

Second, no test of the sponsorship, legislative background, political backing, or administrative responsibility for carrying out these measures can justify any other conclusion than that these measures, if enacted, will operate in the most oppressive and reactionary manner.

(a) No one can honestly expect that measures sponsored by the United States Chamber of Commerce, the National Association of Manufacturers, the General Electric Co., the American Mining Congress, Westinghouse, Allis-Chalmers will be mildly administered against unions. Everything in the record of American labor relations forbids any such opinion.

We have noted that every labor union that fights for its people has been assailed as subversive.

The American Machinist of February 16, 1953, quotes the Timken Roller Bearings Co. as declaring of the CIO:

"Where attitude toward free enterprise is concerned, CIO follows the Communist Party line with the persistence of a shadow."

In 1944 the House Committee on Un-American Activities issued a report declaring:

"* * * the CIO Political Action Committee represents in its main outlines a subversive Communist campaign to subvert the Congress of the United States to its totalitarian program."

In 1952 after the UE, the IUE–CIO, the UAWA–CIO, the IBEW–AFL, and the IAM–AFL had rejected a 1-percent wage offer of the General Electric Co., Vice President Boulware of GE declared that the action of these unions "is just as much help to Joe [Stalin] as if these union officials were, in fact, Communist agents."

The American Thread Co. made the following statement to its workers concerning the United Textile Workers of the CIO:

"If they come in you will share the same restrooms with Negroes and work side by side with them. It comes right out of Russia and is pure communism and nothing else."

Such examples could be multiplied indefinitely. There cannot be the slightest doubt but that the corporations which have been pressing for legislation to outlaw unions intend them to operate against all unions, not just a few.

(*b*) The legislative ancestry of the Brownell proposals forbids any doubt that the bills will be, and are intended to be, administered in the most reactionary manner. The Attorney General's proposals are modeled after antilabor legislation such as the Goldwater-Rhodes bill, the Butler-Miller bill, the Velde bill, the McCarran bill, and numerous others, introduced at the behest of big business and pressed by the most notoriously reactionary, extremist, McCarthyite forces in American political life. As has been shown, all of these measures have been denounced by organized labor and other liberal and progressive forces.

What right has anyone to argue that small damage will be done by a bill modeled after the bill of Senator Butler of Maryland, open disciple of McCarthy, who won election to the Senate with McCarthy's aid through the use of a faked, forged photograph showing his opponent in seeming intimate discussion with a former head of the Communist Party of the United States?

(*c*) The Brownell proposals will find their main political support in Congress and the administration from the most outspoken and extreme advocates of McCarthyism. Who can expect moderation in the administration of a law proposed by a Wall Street corporation lawyer who did not scruple publicly to designate the last President of the United States as a knowing harborer and promoter of spies? What are we to expect from legislation embodying the ideas of men who have designated the 20 years of the New Deal and the Fair Deal as "20 years of treason," who have publicly denounced Gen. George Marshall as "a front for traitors," "steeped in falsehood," "always serving the world policy of the Kremlin," as Senators McCarthy and Jenner have done?

Even the United States Supreme Court has not escaped the universal smear against those who believe in American principles of justice and freedom, and attempt to exercise them. Senator Eastland (a member of the Senate Judiciary Committee considering this very legislation) recently has told the Senate that the Supreme Court has been "indoctrinated and brain-washed by left-wing pressure groups."

The extremist hatred of the forces of McCarthyism for any idea expressing the slightest sympathy for the cause of working people was demonstrated most strikingly in a recent hearing of another congressional investigatory group, at which a leading staff "expert" of the committee declared that two papal encyclicals "paralleled very closely communistic ideals."

The Secretary of Commerce, Sinclair Weeks, gave an official administration viewpoint on what is to be considered communism in a recent speech to a gathering of Detroit industrialists. On June 14, less than 10 days ago, in an address to the Detroit Economic Club, this administration spokesman declared:

"Our homegrown Communists, echoing their Moscow masters, are trying to start a depression. * * * For political gain and for no other reason a considerable group of New Dealers, labor agitators, and assorted professional liberals and radicals have been trying to talk and scare the country into depression."

The Director of the Federal Bureau of Investigation, J. Edgar Hoover, gave point to his professed friendship and admiration for Senator McCarthy when he told the Daughters of the American Revolution on April 22, 1954:

"To me, one of the most unbelievable and unexplainable phenomena in the fight on communism is the manner in which otherwise respectable, seemingly intelligent persons, perhaps unknowingly, aid the Communist cause more effectively than the Communists themselves. The pseudoliberal can be more destructive than the known Communist because of the esteem which his cloak of respectability invites" (Congressional Record, Apr. 26, 1954, p. A2989).

By such reasoning as this, if the Brownell bills become law, those who fight for jobs for the growing millions of unemployed, those who seek food for the needy, those who advocate Government action on public works, who protest against wholesale Government subsidies to runaway plants to sweatshop-wage areas—all these are to be lumped together as "Communists, New Dealers, liberals, and radicals," "echoing Moscow," subject to outlawry and blacklisting.

No one has a right to defraud the American people with the claim that legislation embodying, as this does, the aims and principles of McCarthy, Butler, Jenner, McCarran, Velde, etc., can be or is intended to be used in any but the most harsh, oppressive, and fanatical manner to outlaw unions, blacklist workers, and to suppress the traditional rights and liberties of the American people.

Finally, Mr. Brownell's proposals themselves eliminate any possibility that they are intended to eliminate only a few unions and blacklist only a few workers. Mr. Brownell, in these proposals, confers upon himself, a Wall Street corporation lawyer, and the ultrareactionary Subversive Activities Control Board the power of life and death over unions.

Only the most reactionary and hostile attitude toward labor can be expected from a body whose Chairman, ex-Governor Herbert of Ohio, has actively engaged as a strikebreaker on behalf of a corporate monopoly. In 1948, in Dayton, Ohio, while Governor of the State, SACB Chairman Herbert sent 1,500 National Guard men with tanks, gas, machineguns, and bayonets to drive the striking workers of the Univis Lens Co. back to work on the employer's terms.

Equally revealing of the true objectives of this legislation is the fact that sitting on the SACB in judgment of the American labor movement and the other associations of the American people would be ex-Senator Harry P. Cain, Republican, of Washington, a man whose membership in the Senate was marked by an unbroken reactionary antilabor record, a man who considered it a compliment to be designated, as he was, "the No. 1 real-estate lobbyist in America," and a man who, in his final unsuccessful bid for reelection, received his financial backing from the same ultrareactionary grouping of Texas oil billionaires that provides the main financial support for the grouping around Senator McCarthy.

We submit to this committee that measures such as these under consideration here, sponsored by the most reactionary corporate interests, supported by the most reactionary forces in political life, administered and interpreted by the most reactionary bureaucrats, are not designed to protect the security, welfare, and freedom of the United States, but to destroy it. The objective is not to preserve democracy, but to destroy it and to replace it by "some form of disguised fascistic dictatorship."

The late President Roosevelt once said of a similar attempt to stampede Americans into giving up their freedom:

"This document says that the 'Red specter of communism is stalking our country from east to west, from north to south'—the charge being that the Roosevelt administration is part of a gigantic plot to sell our democracy out to the Communists.

"This form of fear propaganda is not new among rabblerousers and fomenters of class hatred who seek to destroy democracy itself. It was used by Mussolini's Black Shirts and by Hitler's Brown Shirts. It has been used before in this country by the Silver Shirts and others on the lunatic fringe. But the sound and democratic instincts of the American people rebel against its use, particularly by their own Congressmen and at the taxpayers' expense."

IV

We believe that the reason for the pressure on Congress to rush through these measures was very well summed up by the United States Chamber of Commerce, one of the foremost advocates of repressive antilabor legislation, when it declared "1954 might well be the last chance for a number of years to improve the Taft-Hartley Act." (United States Chamber of Commerce Washington

Report, April 23, 1954.) To the United States Chamber of Commerce "improve" means to make the Taft-Hartley Act a more antilabor instrument.

The United States Chamber of Commerce has long been a leading source of pressure for proposals such as the Brownell proposals, to provide for outlawing unions, for depriving workers of the right to choose their own leaders and their own union policies and for the legalization of employer blacklists.

The Brownell proposals under discussion here are not the first such legislative proposals to come before Congress. During the past 2 years there has been a flood of such measures, all pressed very strenuously by the United States Chamber of Commerce, the National Association of Manufacturers, the American Mining Congress, the General Electric Co., the Westinghouse Co., Allis-Chalmers, Western Union and a multitude of other big-business interests. Measures fundamentally similar to the present proposals of the Attorney General have been the Goldwater-Rhodes bill, the Butler-Miller bill, the McCarran bill, the Lane bill (since withdrawn by its sponsor), the Velde bill and many others. All have been aimed at outlawing unions, depriving workers of the right to choose their own unions, their own union leaders, and running their own union affairs, and a variety of them have been introduced to deprive individual workers of employment under a variety of political screening procedures, or by direct employer action.

The fact that the Brownell proposals would include all organizations in its net does not conceal the fact that it is primarily aimed against organizations of working people, that unions are the main target and that union-hating employers are the main beneficiaries.

Any pretense that the Brownell proposals are not aimed at unions and union members is made ridiculous by the specific provisions of House Joint Resolution 528 itself, which provides in section 5 (e) for specific antiunion sanctions to be applied by the National Labor Relations Board, or by employers directly.

Mr. Brownell's proposal to deprive workers of their employment in privately owned facilities engaged in civilian production through a screening process based on thought-control is adopted in spirit and principle from a recently introduced policy of the General Electric Co., adopted in coordination with Senator McCarthy. Under this company policy, although all GE employees engaged in any kind of secret or classified work are passed upon in writing and specifically approved for their work by the Army, the Navy, the Air Force or the FBI, any employee who refuses for any reason to answer "any and all questions" put to him by a congressional committee or any other governmental agency is fired by the company. Under the operation of this policy GE has fired some 20 employees in plants in Lynn, Syracuse, Erie, and Schenectady. Not one was charged with any wrongdoing. Every one was engaged in civilian production. The fact is that none was accused of either espionage or sabotage, or any other wrongful act, and nothing could be produced against them out of their service records with the company, extending in many instances over many years, to justify their firing. Yet they have been fired, they and their families deprived of a livelihood, and under such circumstances as to make it extremely difficult, if not impossible, for them to find other employment.

This GE-McCarthy policy has been adopted by a number of other antilabor corporations. Mr. Brownell now proposes that Congress should enact it into law.

This committee should know that the UE has brought suit in the United States District Court for the District of Columbia to force GE to rescind its political blacklist policy and to pay damages to the employees it has injured thereby. This suit is now in litigation. A motion by the company to dismiss the complaint has been denied by the court.

The GE-McCarthy blacklist policy was announced by the company under the usual pretense of fear of sabotage. This union, the UE, sent a delegation to the national headquarters of the company to protest, and directly challenged the company to cite one instance of sabotage or espionage by a GE worker. The company was unable to cite one instance to justify the blacklist.

The following incident sheds light on the real point and purpose of GE policy, which Mr. Brownell has endorsed by imitation.

A UE local represents the employees of the powerhouse at the General Electric Co.'s Bridgeport, Conn., plant. In April and May the powerhouse workers had 3 grievances, 2 concerning pay and 1 over filthy water from a plantside drainage pond that the company provided for the employees to wash in. The powerhouse men passed out leaflets to the entire plant to obtain support for their grievances.

What happened will be quoted here from signed statements of powerhouse men that are in the union's possession:

This is from one worker's statement:

"At about 4 p. m. on Tuesday, May 11, when our shift was about to begin work we were told by Chief Engineer John Bunce to report to Mr. Moffit's office before starting on the job. The day shift was paid overtime to carry on while we were in Moffit's office. Present besides the seven workers were Mr. Bunce, Mr. Moffit, Mr. Burleigh, and Mr. Reid."

(Mr. Reid is Bridgeport manager of employee and community relations for GE.)

The statement continues:

"Mr. Reid took over the meeting and delivered a talk to us. He said he was concerned because the leaflets we were issuing smacked of Communist tactics and that he did not want the public to get the impression that the powerhouse workers are Communist. He gave the company position, contradicting the union statements in the leaflets.

"He said that congressional committees had indicated at times that they should investigate Communists in the powerhouse.

"He said it was up to the general membership to put a stop to this Communist type of leaflet and that if the membership did not, then the company would have to do something about it."

The following is from another worker's statement:

"Mr. Reid did all the talking. He said that when the UE first sought bargaining rights they were pressured by certain officials to take action against the UE because of the Communist issue * * *

"He went on to say that the leaflets we are passing out at the gates smack of Communist tactics. He said that there was no accusation of communism against the powerhouse men, but this approach to negotiations is a Communist tactic. He said that he would hate to see the powerhouse men tainted and smeared with the mantle of communism or fellow-travelers.

" 'Take the case of the fire in Dan's locker,' he said. 'That could be constructed as Communist terrorism if it got into the wrong people's hands.' * * *

"He said that if we continued with this form of leaflets at the gates, the company will have to take action to overcome this unfavorable form of propaganda."

From another worker's statement:

"Mr. Reid did all the talking. He said the pamphlets we were putting out would hurt us if we kept up with it. He said people would begin to think the powerhouse fellows were Communists and that these leaflets were Communist tactics. He said that it wasn't the men in the powerhouse who were doing this, but someone in the background. The pamphlets are not true, he said, and he insisted that the pond water is good enough to drink and that the pumpmen were not taking a pay cut. He mentioned the fire in Dan Roberts' locker as an example of Communist tactics."

From another worker's statement:

"Mr. Reid * * * had two copies of our leaflets on the desk in front of him * * * He said that the water was changed because cold water was running warm, and not because of the reasons we gave * * * 'This is a typical Communist line,' he said. He claimed that when UE was certified at the powerhouse there was much publicity about its being a Communist move. It made him feel bad and he knew it made the workers feel bad too.

"Then he said that GE encourages unions and believes unions to be a good thing. He said that we could easily be smeared again. 'Such an incident as the fire in the man's locker, which was probably an accident, could be used against you by some people,' he said.

"Then he gave us a general rundown of what would happen to us if we didn't stop these leaflets, that the general public would put the Communist tag on us."

It should be noted that all three shifts of powerhouse men were called in by management and all given the same dose of threats. This incident reveals very clearly what communism means to the corporations who are urging blacklist laws upon Congress. They are not seeking to protect the country from subversion—they are seeking to protect themselves from the necessity for settling their employees' just grievances; seeking to get rid of the unions that protect the wages and conditions of American workers.

The leaflets that the General Electric Co. called Communist tactics are appended to this statement.

We submit that Mr. Brownell's proposals would give employers opportunity to break up, dissolve, and liquidate unions, and through the operation of the

national screening policy would place in the hands of employers the most direct and brutal means of intimidating their employees and of getting rid of any who dared question any company action.

V

It is impossible to overstate the danger to the economic security and welfare of the country that these Brownell proposals present. Designed as they are to wipe out entire unions whose policies and programs run counter to the political viewpoint of the dominant corporations, and to drive out of employment individual workers not sufficiently docile to satisfy their employers.

The effect is to render all unions impotent in collective bargaining, and to hand over to the corporations absolute control over the economic life of the country.

It has for years been held fundamental to the economic health of the United States that the colossal economic power of the corporations must be counterbalanced by the economic power of workers, organized in strong and independent unions and exercising their power through genuine and free collective bargaining.

It was out of the experience of the great depression of the 1930's that this fundamental principle was enacted into law in the Wagner Act. The same necessity was recognized in the Taft-Hartley Act and the same principle of the necessity of free collective bargaining retained.

The Brownell proposals throw this economic safeguard out of the window.

It cannot be argued in extenuation of proposals to establish political control over the labor movement and over individual workers that it is intended to outlaw only a few unions and fire only a few workers.

If the history of American labor relations has proved anything, it has proved that every union that fights for the interests of its membership is furiously assailed as subversive and un-American.

Once it is established that the Government can set up categories of outlawed unions and officially approved unions, any union desiring to maintain its status on the approved list must conform in policy and program to the rules that politicians and employers establish. To whatever degree any union fights to serve the interests of its membership, it too will be redbaited and it too outlawed in its turn. The Brownell proposals, like the previous licensing proposals introduced in Congress make subservience to the employers the price of existence for every union.

In the present period of grave economic uncertainty the enactment of the Brownell proposals would be singularly reckless and harmful.

Only through collective bargaining carried out by strong trade unions can realistic progress be made toward the wage and working conditions needed to guarantee the purchasing power and high living standards required to offset depression and create stabilized peacetime full employment. There is today, in 1954, grave concern about the country's economic outlook. Today more than 4 million workers are unemployed.

Yet in spite of a growing need for mass markets employers are using every weapon at hand to reduce earnings and reduce working conditions through speedup. Proposals such as those of Mr. Brownell are designed to strengthen the employers' hand in this drive.

Now, more than ever, America needs strong unions to achieve steady, substantial and general increases in the purchasing power of the people through rising real wages. Only through collective bargaining, carried out by strong unions free to serve the interests of their members can the economic advances required by the general welfare be obtained from employers driving for maximum profits by getting more work for less pay.

Only genuinely and completely free trade unions, controlled exclusively by their members who have full freedom of choice of their union, their union policies and their union leadership, and who enjoy uninhibited political freedom as workers can have the strength and effectiveness required to protect the economic welfare and democracy of the country.

VI

We have noted that Mr. Brownell's proposals stem from many other legislative proposals, such as the Goldwater-Rhodes bill, the Butler bill, the McCarran bill, the Velde bill, and others.

The surprising lack of publicity that has been accorded the proposals of Mr. Brownell, and the fact that hearings on them have not been scheduled or

publicized in the ordinary manner have operated to deprive labor and the public of an ordinary opportunity to express their opposition to the measures here proposed.

While we do not in any sense pretend to speak for any organization other than our own union, the UE, we think it is proper that this committee should be aware of what other organizations have said of similar measures with similar purposes.

Here is what the late Philip Murray, then president of the CIO, wrote to the subcommittee on Labor and Labor-Management Relations of the Committee on Labor and Public Welfare of the United States Senate, January 9, 1952, on the question of setting up a Government agency with power to outlaw unions.

"As a basic philosophy, we in the CIO believe that the right of American workers to choose their own collective-bargaining representatives is as fundamental to our democratic way of life as the right to speak, to worship, and to assemble freely with one's fellow men. Encroachments upon this fundamental right to choose collective-bargaining representatives should never be undertaken except after a showing that such encroachments are vitally necessary to our national safety. We do not believe that any such showing has been made."

Testifying on the same issue before the same subcommittee on Tuesday, June 17, 1952, the late Mr. Allan S. Haywood, then executive vice president of the CIO, stated the official position of the CIO as follows:

"Government licensing of unions would inevitably involve thought control, since it would turn not on acts, but on beliefs and loyalties. The determination whether a union should be proscribed would necessarily reflect the individual political and economic views and attitudes of the Government officials making the determination. Once the gate is opened to Government proscribing of unions, the temptation will be present to use the device to destroy any union with whose objectives the administration in power may not happen to agree."

The late President of the American Federation of Labor, William Green, wrote on this question to the same Senate subcommittee as follows:

"Experience gained through a number of years of activity, official and otherwise, in this great trade union movement, makes it clear that no legislation of any kind whatsoever is necessary in order to prevent any of these unions being dominated by Communists.

"Workers are moved by a spirit of voluntarism. Legislation would serve to substitute compulsion for voluntarism. Workers resent compulsion; consequently the enactment of legislation designed to prevent Communist domination of unions would have a bad psychological effect."

George Meany, president, American Federation of Labor, in testimony before the Senate Labor and Public Welfare Committee said:

"I have studied Senator Goldwater's amendment very carefully. What it adds up to pretty much is the licensing of unions. Of course, it would certainly be a blow to Communist-dominated unions to the extent to which it eliminates unions and renders them helpless. In other words, if you eliminate all unions, of course, you eliminate Communist-dominated unions."

Glen Slaughter, Research Director of Labor's League for Political Education, was quoted in the AFL News-Reporter of March 27, 1953, on the subject of the Goldwater-Rhodes bill as follows:

"It could order out of business any union that ever advocated anything the Communist Party advocated, including income taxes and public schools. No bill in recent years has so closely resembled the thought control so characteristic of totalitarian regimes."

At the AFL convention on Friday, September 25, 1953, Matthew Woll, chairman of the convention's resolutions committee, declared:

"Your committee rejects as dangerously antidemocratic the idea or plans of any political party to seek to determine or influence the composition of the leadership of the free trade-union organization on the basis of general election results. We cannot emphasize too strongly that the trade unions cease to be genuine free trade unions and cannot represent the vital interests of the working people and that democracy is jeopardized when their organization structure and leadership are determined by anyone outside their membership. This holds true for every democratic country."

Mr. Woll, it should be noted, was speaking of trade unions in Germany. His remarks go directly to the point of the Brownell proposals in the United States.

Walter Reuther, president, Congress of Industrial Organizations, declared, in testimony before the Senate Labor Committee March 30, 1953:

"I believe it is a mistake to try to inject this issue [communism in labor unions] in the Labor-Management Relations Act because it does more harm than good."

In testimony presented on behalf of CIO before the Senate Labor and Education Committee on April 23, 1953, the issue was discussed in the following terms:

"The dangers of the shotgun legislative approach to the problem of Communists are clearly evident in the bill introduced by Senator Goldwater. This bill demonstrates in striking form the extreme harmfulness of the drastic proposals advanced by those who, whatever may be their sincerity, are willing to sacrifice fundamental liberties and create widespread havoc for the ostensible purpose of combating communism * * * the Goldwater bill embodies a pernicious and monstrous plan to abolish fundamental American freedoms and destroy American trade unions."

It would be possible to continue almost indefinitely with similar expressions of labor opposition to the Goldwater-Rhodes, the Butler-Miller, McCarran, Velde, and other similar measures which are the legislative precursors and models for Mr. Brownell's proposals. The entire trade-union movement of the United States, regardless of their internal differences, is on record as being vigorously opposed to the type of legislation of the type of the Brownell proposals you are considering.

VII

In conclusion, we urge that the committee give most serious attention to the fact that measures which deprive people of freedom of speech, freedom of thought and freedom to associate together for the furtherance of lawful purposes which they believe to be in their own best interests, contain within themselves an irresistible necessity for increasingly broad, reactionary, and extreme enforcement. No inquisition, and the Brownell proposals subject all American workers and all American organizations to an inquisition, can be satisfied with one victim. The very nature of inquisition requires that as soon as one "menace" is liquidated a new one must be found to justify the continued existence of the inquisition itself. This has been the invariable lesson of history.

The colonial witch hunts of Salem provide an American example. Beginning with the poorest, least-regarded individuals of the community, the witch hunt spread, by the inevitable logic that drives all witch hunts, to include the most highly regarded and worthy in its web. The prosecutor in his summation at the final trial in which the most revered matron of Salem was being tried as a witch, summed up the philosophy behind all witch hunts, and the force that irrestibly drives them to new extremes:

"Satan uses human mediums, whom he sought among the adopted children of God * * * for it is certain that he never works more like the Prince of Darkness than when he looks most like an angel of light."

We have seen this same sort of retrogression toward the extreme in our own midst, in the proceedings of the committee headed by Senator McCarthy. It should now be clear that the Senator would outlaw, condemn, and exclude from the body of loyal Americans all who differ from him politically in any degree.

The Brownell proposals—which would impose McCarthyism upon American workers, the American labor movement and all organizations of the people—needs must progress in the same manner.

The recent legislative history of our country provides us with a clear example of how the course of suppression, once embarked upon, leads to further and broader suppression of political freedoms. We have seen enacted in recent years the Smith Act, the Taft-Hartley Act, the McCarran Acts—all in varying degrees setting up Government as censor over the ideas and associations of the people of the country. Each of these acts has been based on the premise that the security of the country requires restrictions on the rights of the people. Each act has been advanced as a solution to the problem. Yet each act has led to a further act, extending the limitation on political freedom to broader and broader groupings.

We have proceeded from the principle that one body of political ideas constitutes an unlawful conspiracy, to the principle that people can be punished and organizations outlawed for association with the holders of the forbidden ideas, to the point that Congress is considering here, in this legislation now before you, whether to establish in law the principle that organizations may be liquidated and workers condemned to the cruel and unusual punishment of backlisting because of association with associates of the originally outlawed group.

People form labor unions for the purpose of improving their economic welfare and other organizations are built for other reforms or changes they may deem

desirable. If this Goverument, like Hitler's government, takes the position that it can dictate to the people what organizations they may have and what changes they may seek, it may suppress organization after organization, but the people's needs will remain and they will organize in new forms to achieve them. The policy of suppression must either be defeated and abandoned, or imposed in an increasingly harsh and repressive manner.

We have said at the outset that we come before you with the same deep and sincere concern for the welfare and security of our country that motivates most Americans.

Where does the security of our conntry lie?

Our country was established upon the proposition that our country's security and welfare is rooted in the democratic control of its policies by the people—in their absolute freedom to assemble, to organize in their own interests, to speak, to write, to discuss all ideas and proposed courses of action, and to choose the better and reject the worse. Our country owes its greatness to the principle originally established, that no king, or dictator, or body, or board could substitute for the people in deciding where their own welfare and safety lies. The security and welfare of America is nowhere so safe as in the hands of its people. Anything that strengthens, deepens, and extends popular sovereignty serves the security and welfare of the country. Anything that limits or interferes with democratic control weakens our security and welfare.

We believe that effective, genuine democracy, based upon the popular rule of the people in America, reqnires a vigorous, powerful, and free labor movement to offset on behalf of the ordinary people the vast economic, political, and propaganda power of giant industrial and finaucial interests. We believe that this necessity is demonstrated most sharply by the very legislation we are opposing here today, legislation sponsored by these same giant industrial and financial interesis for a new blow against the rights and freedoms of all Americans.

As you consider this legislation we urge you most gravely to consider this truth—that the security and welfare of our country, which you have sworn to uphold, has no bulwark so strong or trustworthy as the liberty and freedom of its people, which you have sworn to maintain.

This principle has nowhere been put more clearly or briefly than in the words of the late Chief Justice Charles Evans Hughes when he wrote:

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsible to the will of the people, and that changes, if desired, may be obtained by peaceful means.

"Therein lies the security of the Republic, the very foundation of constitutional government."

ANALYSIS BY DAVID SCRIBNER, GENERAL COUNSEL, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE) OF H. J. RES. 528 AND S. 3427

(Brownell bill introduced by Mr. Reed of Illinois and Senator Ferguson, of Michigan)

House Joint Resolution 528, if enacted into law, would be the first legislaiive enactment directly providing for the liquidation and dissolution of labor unions and other organizations because of the polltical views and beliefs expressed by the organization, or because of the political beliefs and associations of its officers or members.

It is true that the Subversive Activities Control Act likewise is designed to achieve that end through registration and other restraints. However, that act does not in express terms authorize the Subversive Activities Control Board to issue an order of liquidation or dissolution. It may seem curious that, while Congress has not, through any existing legislation, expressly called for liquidation of Communist action organizations, it would, should this bill be enacted into law, authorize the liquidation of other organizations designated as Communist-infiltrated organizations.

The fundamental reason, according to the bill, for such dissolution is the infiltration of such organization by members of a Communist-action organization. However, it becomes readily apparent from an analysis of the pending bill, as well as the Subversive Aciivities Control Act, that the aim of this type of legis-

lation is not simply to outlaw Communists or the Communist Party but to seize unlimited governmental control over any organization or association which does or could at any time express or act upon ideas and policies which are not in conformity with those of the political administration in power.

Although it is almost impossible to calculate either the number of organizations or the number of Americans who are members of organizations which may be affected by this bill, it would not be a wild guess to state that this bill may and could affect many thousands of organizations and associations and many millions of Americans.

In the field of labor we dare say that there is not a labor union in the country, including the international unions and local unions, which could not become enmeshed in the octopuslike tentacles of this bill and subject to an ultimate order of liquidation and dissolution.

The basic reason for this is the concept in the bill that what counts is not the validity or legality of the policies or action of a particular organization or association but rather the purported motivation for such policies or action, and whether the policies or action taken happen to coincide from time to time with policies and actions taken by Communist-action organizations, Communist foreign government, or the world Communist movement.

The bill provides as an important criterion for determining whether an organization is a Communist-infiltrated organization and thus subject to legislative destruction, "the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, or are members of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act."

In the light of the many recent attacks made by Government officials, legislative committees, and legislators holding prominent congressional posts, on countless organizations, including labor, religious, professional, scientific, legal, medical, educational, and other organizations, it does not take much imagination to anticipate the extent to which the provisions of this bill could be used to ensnare and destroy the right of any form of association in this country.

It is also obvious that since the body of the labor movement has traditionally constituted a major brake on reactionary policies of any political administration, such organizations would be a first and major target.

While there are specific fundamental legal and constitutional objections to the various aspects of the bill, the object of the bill, i. e., the liquidation of nonconforming organizations, is so lawless and unconstitutional that, if passed, the bill would have the effect of a Fascist "putsch" against the people and our democratic society.

Guilt by association—twice removed

"* * * Under our traditions beliefs are personal and not a matter of mere association * * *," *Schneiderman* v. *U. S.* (320 U. S. 118, 135).

"* * * the traditional American doctrine [requires] personal guilt rather than guilt by association or imputation before a penalty or punishment is inflicted," *Bridges* v. *Wixon* (326 U. S. 135, 163).

A Communist-infiltrated organization is defined as "any organization in the United States (other than a Communist-action or Communist-front organization) which (*a*) is substantially directed, dominated, or controlled by a Communist-action organization or by a member or members thereof, and (*b*) is in a position to affect adversely the national defense or security of the United States."

"Substantial domination"

It should be noted that it is not required that an organization be completely directed, dominated, or controlled. It is sufficient if it is "substantially" directed, etc. As a legislative term in this context, the term "substantially" is so vague and indefinite as to make it constitutionally meaningless, and therefore invalid. The terms "directed," "dominated," and "controlled" are likewise not susceptible of reasonable definition, particularly in the light of the penalty involved, i. e., complete liquidation. These are essentially rhetorical terms, used loosely by public speakers and demagogs. The definition of such terms depends on the particular social, economic, or political predilection of the speaker.

Similarity of ideas

The possible interplay of cause and effect in the policies and programs of various organizations has so many ramifications that it would be impossible

legislatively to describe "direction, domination, or control" of one organization by another. Therein really lies the fundamental evil, i. e., guilt by association. But actual association is not required under this bill. Actual guilt could be determined by finding a similarity of ideas among organizations.

Twice removed

But the bill goes even beyond that. It is not necessary that there be "direction" of one organization by a Communist-action organization to have it declared a "Communist-infiltrated organization." It is sufficient under the definition that the "direction, domination, or control" stems from a member of a Communist-action organization. Thus, the theory of guilt by association at this point is twice removed. Moreover, it would be truly a stroke of intellectual genius for an administrative agency to determine the nature of the effect the actions of a member of a Communist-action organization have on another organization. Assume that a member of a Communist-action organization were also a member of another organization; that because of his personal power or persuasiveness he succeeds in convincing one or more members or officers of the organization, for instance, that it would be wise and proper that the organization should adopt a policy (consistent with one of the policies of the Communist-action organization) calling for the adoption of a perfectly legal Federal fair employment practice act. Is that direction? Is that domination? Is that control? Would it make it any the more so if an individual member of a Communist-action organization would convince the membership of the necessity to adopt other similar policies?[1]

An insult to the people

Is it to be assumed, as this bill does, that the membership of labor organizations, as well as the membership of religious, fraternal, political, and other organizations are constantly bamboozled into adoption of such policies, or that such policies are adopted against their will or because they are apathetic? That would be an unwarranted and insulting attack on the integrity and intelligence of the American people.

Free discussion—no compulsion

Moreover, is it within the province and constitutional power of government through a political administration to dictate to the people what policies should or should not be the guiding policies of their organization? That question, of course, answers itself. Sound thinking and policy on social economic or political matters can arise only out of free discussion and association, and never out of governmental compulsion.

So vague that men must guess

"And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law" (*Connally* v. *General Construction Co.*, 269 U. S. 385).

To assist the Board in determining whether an organization is Communist-infiltrated, the bill provides that the Board shall take into consideration:

"(1) The extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, or are members of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act."

The extent to which * * *

The phrase "the extent to which" makes the provision so vague and ambiguous as to violate constitutional due process guaranties. John W. Davis, the eminent lawyer, when asked to comment on the phrase in a similar bill, advised the committee considering the bill—

"Or take the introductory phrase itself as used throughout—'the extent to which, etc.'—what are the limits which those words envisage? To how great an extent, how customary a practice, how definite, pervasive, or continuous a

[1] Of course, it is hardly necessary to discuss the possibility that a member of an organization that has been held to advocate the overthrow of the Government by force and violence would convince another organization to adopt a similar policy. Experience as well as legislative history makes it perfectly clear that that has not been the problem, nor is it the problem.

policy? There would seem to be no room here for the application of any doctrine of de minimis. But assume, if you will, that the organization contains some members or even some 'leaders' who (as under the clause (H) recoguize the 'disciplinary power of such foreign government' or (as under clause (J) 'consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization,' how many or what proportion of such individuals are to be held sufficient to color the entire organization? What is to be the status of a dissenting member, a minority of members or even a majority who do not hold such views. Are they and the organization to be condemned on the principle of noscitur a sociis, i. e., guilt by association?"

*Regardless * * **

Under this clause, the mere fact that a member of a Communist-action organization, Communist foreign government, or world Communist movement is also active in another organization is considered to be of sufficient importance to warrant a finding that the organization is Communist infiltrated. Moreover, the organization and all of its members may be penalized through liquidation of that organization, regardless of whether they knew that one of its active members was a member of a Communist-action organization; regardless of whether they would have approved or disapproved the membership in that organization of the Communist-action organization; regardless of whether they were in agreement or disagreement with the positions advanced by that person; regardless of whether they were fully aware of that person's membership in the Communist-action organization, but nevertheless were in complete accord from time to time on certain policies advanced by him and from time to time were not in agreement with other policies; regardless of whether the particular organization by virtue of its constitution voluntarily adopted could not discriminate against persons of any particular political faith or association, or membership and could only cause the expulsion of members solely on the basis of acts and deeds committed which were harmful to the purposes and existence of that organization.

Here, again, we have a form of legislative criterion which can have no legal relevancy to the asserted objective of insuring the national defense. John W. Davis had this to say about a similar provision:

"* * * The question at once arises what degree of activity or what number of identifiable persons are necessary to stamp the organization. Passing (B) and (C) we come to (D) 'the position taken or advanced by it from time to time on matters of policy.' This general language seems to add nothing to the attempted definition. I repeat, that unless these definitions have an ascertainable legal conduct their use throughout the remainder of the act must render it unenforceable."

The bill concludes that mere participation by a member of a Communist-action organization is an organization which the bill itself says is established "for legitimate purposes," is a major criterion for determining that the national security is so affected. If that be so, says the bill in effect, the unconstitutional right of association must be destroyed. What a cynical mockery of our constitutional system of government.

Promoting "objectives"

Another criterion the Board may consider under the bill in determining whether an organization is Communist-infiltrated is:

"(2) The extent to which the funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act."

This provision does not even require that the funds be used to further or promote the Communist-action organization. It is sufficient if its objectives are promoted.

The bill apparently does not contemplate as a serious matter the possibility of direct contributions by any particular organization to a Communist-action organization. It does contemplate the use of funds, resources, and personnel to advance issues or, as the bill says, objectives of the Communist-action organization, Communist foreign government, or world Communist movement.

Nor does this provision distinguish between legal and illegal objectives. Is every organization and association in the United States to refrain from using its funds, resources, or personnel to advance legal objectives which may also

be the objectives of a Communist-action organization? That would obviously be an absurd and, of course, an unconstitutional requirement. Or would every organization have to check to determine whether or not lawful objectives it would normally pursue under its constitution are not the objectives of any Communist-action, Communist foreign government, or the world Communist movement before it could decide to use its funds, resources, or personnel to further or promote any such objective?

And suppose a Communist-action organization, Communist foreign government, preempts by statement or otherwise a substantial body of objectives normally pursued by the American people, such as a peaceful solution of any threatened world conflict, higher economic standards for the people, an end to discrimination against minority groups, etc.? Would the American people be thereby restrained under the force of this bill from maintaiuing their organizations and associations in order to achieve such stated objectives? The question itself demonstrates the utter absurdity of this provision.

Nondeviation

The third criterion that the Board may take into consideration in determining whether or not an organization is Communist-infiltrated provides:

"(3) The extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act."

Again the baffling words "the extent to which" are used with all the uncertainties and ambiguities inherent in that phrase. It is noteworthy that this provision does not require total nondeviation between the "positions taken or advanced" by an organization and those taken or advanced by a Communist-action organization, etc. The words "the extent to which" open the field wide. In addition, the references to positions taken "from time to time" indicates clearly that the bill has reference to possible isolated instances.

What is of gravest importance is that again there is no distinction whatsoever made between legal policies and illegal policies. In other words, as has already been indicated, if a union or any other organization or association would, through a democratic vote of its membership, decide on certain policies which the membership voluntarily desired and in fact insisted upon, the mere coincidence of the similarity of those policies with policies of Communist-action organizations would have the effect of outlawing the union or organization and lead to its liquidation.

In a position to impair

The fourth criterion is as follows:

"(4) The extent to which it is in a position to impair the effective mobilization or use of economic resources or manpower in connection with the defense or security of the United States."

The whole phrase is sheer gibberish in any legislative or constitutional sense. It is speculative. It is vague. It is indefinite. No ascertainable standards whatsoever are established. The administrative agency is given complete and unlimited authority to make a determination on this critical issue.

Delegation running riot

This criterion as well as the other criteria constitute, therefore, an unconstitutional delegation of the power of Congress. The Supreme Court has spoken on this question:

"Here, in effect, is a roving commission to inquire into evils and, upon discovery, to correct them. * * * This is delegation running riot" (*Schechter* v *U. S.*, 295 U. S. 495, 551–553).

Hysterical attempts to achieve illegal legislative ends, as this bill demonstrates, inevitably produce legislative proposals which are devoid of constitutional guaranties and of ordinary commonsense. Such proposals must be vague and ambiguous.

Nor have we discussed the utterly ambiguous terms such as "Communist-action organization," "Communist foreign government," and "world Communist movement," which are the rather shaky bedrock of this bill and are purportedly defined in the Subversive Activities Control Act. We call attention of this committee to the fact that that act in those respects has not been judicially supported. In fact, they are now under consideration by the United States Court of Appeals for the District of Columbia Circuit in *Communist Party of the U. S. A.* v. *Subversive Activities Control Board*, No. 11850.

A pyramid of presumptions

The present bill is based in essence on the presumptions established in the Subversive Activities Control Act. The irrational pyramid of presumptions upon which this bill is based may have buried under it not so secret desires to achieve a pale form of immortality by a vigorous espousal of the popular sport of Red baiting.

In any event, the courts have considered and rejected a legislative system of unsupported presumptions. The Supreme Court has asserted:

"But the due-process clauses of the 5th and 14th amendments set limits upon the power of Congress or that of a State legislature to make the proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated. * * * Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience" (*Tot* v. *U. S.*, 319 U. S. 463, 467).

Procedures—with a built-in verdict of guilt

"Mere legislative fiat may not take the place of fact in determination of issues involving life, liberty, or property" (*Manley* v. *Georgia*, 279 U. S. 1, 6).

The procedures under the bill, which on their face call for a petition by the Attorney General and a public hearing by the Board thereon with the parties having the right to counsel, is a sham and a fraud. The definition of "Communist-infiltration organization," as well as the criteria which the Board will use in order to determine guilt, as analyzed above, are of such a nature as to make a hearing a cynical farce. It is of no solace to a union or an organization under attack that it may have a hearing where the bill itself carries within it a built-in verdict of guilt, and where any organization under attack can defend itself in effect only by showing that not a single one of its members are or have ever been members of a Communist-action organization; that no member of a Communist-action organization (whether or not he is a member of the organization under attack) ever participated in or influenced the making of policy; that none of its policies ever adopted are in any way similar to policies adopted by any Communist-action organization, Communist foreign government, or world Communist movement; that none of its funds, resources, or personnel have ever been used to advance a policy which may be similar to policies of Communist-action organization, Communist-infiltrated organization, or world Communist movement; and that the organization and its membership could not conceivably in any way affect "the effective mobilization or use of economic resources or manpower in connection with the defense or security of the United States."

Proof of "innocence"

In other words, an organization under attack would have to prove complete innocence of any purported wrongdoing in the political sense and that "innocence" must conform with the kind of innocence which an administrative agency would accept and which would necessarily be based on the political standards established by the administrative agency itself, since there are no adequate standards established by the bill.

LIQUIDATION AND APPEAL

Having held a hearing, the Board may then issue an order declaring an organization to be "Communist infiltrated" and that it should be liquidated. Such an order does not become "final" until all appeal steps to the circuit court and to the Supreme Court have unsuccessfully been taken by the organization under attack. The Board decision does not go into effect until the Board order is final, as described above. (There is one exception, however. The Board does have the power after it has issued an order declaring an organization to be "Communist infiltrated" to prohibit "any individual or individuals from acting as officers or representatives or exercising substantial administrative or policy-making functions" in that organization.)

This apparent sensitivity to the requirements of review is again a cynical gesture. The sponsors of the bill are apparently hopeful that no such organization, having been declared by the Board to be Communistinfiltrated, could survive the appeals. The Board's stamp of illegality would either destroy the organization long before it could secure a determination on appeal or it would so seriously impair its effective functioning as to achieve the completely illegal objectives of the bill without regard to the pious safeguard of the right to

appeal. Moreover, the finding of the Board as to facts, if supported by substantial evidence, is conclusive on the appellate courts.

This demonstrates the insincerity of the appeal provisions of the bill. For even though the evidence in a case clearly showed that even the elastic provisions of this bill could not be stretched to cover the organizations involved, nonetheless, an appeals court would be forced to hold an order of the dissolution if the Board could point to any evidence—no matter how strongly rebutted—for support of its decision.

Laying out the corpse

After a Board order is final the Attorney General can petition the district court for enforcement through court injunctions or other similar action. Failure to comply with the court order would subject any person or organization to conviction for contempt, with a consequent fine and imprisonment.

After an order is final, the Board is empowered to make any orders in order to "effectuate the expeditious dissolution, liquidation, and winding up of the affairs of such organization." Specifically, the Board can, during the dissolution process determine who shall or shall not act as officer or representative of the organization, and has the right to appoint individuals to be in charge of the liquidation, or to put it another way, to lay out the corpse.

It is also of the utmost significance that after the Board has determined that an organization is Communist-infiltrated and before the courts have decided on any appeals, the Board can prohibit "any individual or individuals from acting as officers, or representatives, or exercising substantial administrative or policymaking functions" in that organization. Such an order may be enforced by the courts on petition of the Attorney General immediately and before the order of dissolution has been acted upon by the appellate courts.

Thus, the Board can take full and absolute control of an organization immediately after it has decided that it is Communist-infiltrated. Thus, of course, makes meaningless the right given to appeal from the ruling that the organization is Communist-infiltrated.

An organization is held to be Communist-infiltrated immediately loses any rights before the National Labor Relations Board. The bill specifically provides also that it shall not be unfair labor practice for an employer to discharge an employee or otherwise discriminate against him if that employee "attempts in any manner to compel recognition of such organization for collective-bargaining purposes."

BUT WHAT ABOUT THE CONSTITUTION?

The bill goes far beyond any existing legislation in the field of internal security. Without even any attempt at subtlety or equivocation it legislates the dissolution and liquidation of organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations, and legislates direct Government control and administration of such organizations pending their dissolution.

House Joint Resolution 528 is a monstrosity in the constitutional sense.

It violates every fundamental freedom guaranteed by the Constitution.

It is a complex of premises which in themselves are based on and tied in with unconstitutional provisions of other legislation, specifically the Subversive Activities Control Act, the relevant provisions of which are under constitutional attack in a pending proceeding before the United States Court of Appeals for the District of Columbia.

The bill violates the fundamental and constitutional right under the first amendment of working people and others to associate together in a union or other organization or association, and under leadership freely chosen by them (*Thomas* v. *Collins*, 323 U. S. 516; *Jones and Laughlin* v. *N. L. R. B.*, 301 U. S. 1).

It violates the first amendment rights of free speech and press by calling for the liquidation and destruction of organizations, including labor organizations, which are the means by which the individual members of such organizations express and disseminate their collective views and opinions (*Thornhill* v. *Alabama*, 310 U. S. 88).

It violates the first amendment rights of free speech and press of the individual members of organizations by burdening and encumbering their right to be at the same time members of other organizations, and expressing and disseminating their views and opinions within or while they are members of the organization under attack (*U. S.* v. *C. I. O.*, 335 U. S. 106; *DeJonge* v. *Oregon*, 299 U. S. 353).

It violates first amendment and fifth amendment rights in that the bill is so broad and pervasive as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech (*Winters* v. *New York*, 303 U. S. 507. 509–510).

It violates first and fifth amendment rights in that it calls for determinations seriously affecting property and other rights based on a built-in doctrine of guilt by association at least twice removed (*Schneiderman* v. *U. S.*, 320 U. S. 118, 136; *Bridges* v. *Wixon* 326 U. S. 135, 163).

It violates first and fifth amendments in that it is replete with terms which are so vague and indefinite that "men of common intelligence must necessarily guess at its meaning and differ as to its application . . ." (*Connally* v. *General Construction*, 269 U. S. 385).

It violates the first and fifth amendments in that it constitutes legislation in an area of free speech, press and assembly without bearing a reasonable relation to an evil which Congress has authority to proscribe (*American Communications Association* v. *Douds*, 330 U. S. 382).

The bill violates article I, section 1 and article I, section 8, clause 18 of the Constitution, in that it represents an unconstitutional delegation of legislative power, constituting as it does a roving commission without ascertainable standards to inquire into "evils" and upon discovery to correct them, such a roving commission having been described and attacked by the Supreme Court as "delegation running riot" (*Schechter* v. *United States*, 295 U. S. 495).

It violates procedural due process under the fifth amendment of the constitution in that it contains a built-in verdict of guilt based on legislative presumptions, the effect of which is to take a sham and a fraud of the procedures for determination and review (*Manley* v. *Georgia*, 229 U. S. 1, 6).

Analysis of House Joint Resolution 527 and S. 3428

(Bills introduced by Representative Reed of Illinois and Senator Ferguson of Michigan in the 83d Congress, 2d sess., now pending before the Committees on the Judiciary.)

House Joint Resolution 527 has been presented by the Attorney General as a companion to House Joint Resolution 528. It complements House Joint Resolution 528 in every respect. House Joint Resolution 528 would sanction the liquidation and dissolution of labor unions and other organizations because of the political views and beliefs expressed by the organization or because of the political beliefs and associations of its officers or members. House Joint Resolution 527 carries forward this threat to the democratic fabric of our society. It would sanction for the first time in American history an official Government blacklist which would operate to drive from employment hundreds of thousands of American working men and women from plants and factories all over the country because of their trade union activity or opposition to the current policies of the administration then in power in Washington.

A careful examination of the provisions of this suggested legislation reveals that the above characterization of the scope of the proposed legislation is, if anything, understated. The bill is deliberately designed to permit the operation of a limitless blacklist without boundaries or confines encompassing within its dragnet American working people of every brand of political opinion, association or affiliation. Herein lies its serious threat to democratic institutions and its consequent fundamental constitutional infirmity.

The bill is probably the most loosely drawn piece of legislation ever to be presented to the Congress. It is without intelligible standards, guides, or criteria. It in effect authorizes the President to set in motion immediately a gigantic machinery designed to drive from private employment any worker who does not completely conform to the prevailing concept of governmental policy.

The bill would authorize the President to issue a proclamation or Executive order whenever in his opinion "the security of the United States is endangered," among other reasons by "subversive activity" or "disturbance or threatened disturbance" of the international relations of the United States. Upon such a proclamation or Executive order the bill would authorize the President to institute whatever measures or rules and regulations he considers necessary to bar from "any defense facility" individuals "as to whom there is reasonable ground

to believe they may engage in sabotage, espionage, or other subversive acts." The term "defense facility" is defined as having the same meaning as it has in title I of the Internal Security Act, which in turn defines "defense facility" as any plant or factory which is designated by the Secretary of Defense as a "defense facility." This includes any plant, factory, manufacturing, producing, or service establishment anywhere in the United States.

The proposed legislation provides no other guide to the President beyond the blank check described above. The act as drawn in essence gives the President authority to drive from employment anyone, anywhere, who does not measure up to the standards of suitability prescribed by the political administration then in power. Such a piece of legislation is hopelessly unconstitutional, and in a saner and calmer period would never even be introduced for consideration.

The most elementary function of constitutional provisions are to protect American citizens from such legislation. There probably has never been a bill submitted to the Congress which has contained such impossibly vague and ill-defined language. The three decisive provisions of the act are those which (1) define the conditions upon which the blacklist is to go into effect; (2) define the reasons for blacklisting individuals; and (3) define the extent of the blacklist. Each one of these three key points is phrased in language so vague and indefinite that it violates upon its face the protections of the fifth as well as the first amendment to the Constitution.

Conditions upon which blacklist goes into effect

The President is authorized to institute the blacklist when he finds that the security of the United States is endangered because, among other reasons, of "subversive activity" or "disturbance or threatened disturbance in the international relations of the United States." No legislation which so intimately affects the liberty and livelihood of American citizens has ever contained such ill-defined and hopelessly vague language. What does "subversive activity" mean? Who is to determine what is subversive? What is the threatened activity subversive of? Is the definition of "subversive activity" the definition of the junior Senator from Wisconsin? Does it include adherence to the encyclicals of the Pope, recently identified by the staff of a congressional committee as subversive in character? No term could be more indefinite than the word "subversive." If such a bill were to be enacted, this phrase would allow this system of blacklisting to be instituted at any time.

Reasons for blacklisting

The second decisive point is the definition of who can be blacklisted. Here the statute is equally hopelessly vague and indefinite. The President is authorized to blacklist individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts. The grounds of engaging in sabotage or espionage are obviously meaningless and merely inserted to add a certain hysterical flavor to the legislation. Clearly, if the executive branch of the Government has any reasonable ground to believe that anyone is engaging in sabotage, or espionage, there are more than sufficient statutes on the books to bring such individuals promptly to account. The decisive phrase, of course, is "other subversive acts." As has been discussed above, this phrase is an all-embracing dragnet. If this act is passed, no worker will be safe. Who can say whether his or her honestly expressed opinion or activity will not be considered to be subversive by irresponsible groups in or out of the administration in power? Because of the completely undefined content of this phrase, any worker who is active in his trade union may be subject to blacklisting. No one can say that a worker who speaks out in support of Federal FEPC or against segregation and discrimination in all of its aspects, or speaks out for an annual wage or for an extension of social security, may not at some point, by someone, be considered to be engaging in other subversive activity. In this respect the bill merely enacts into law McCarthyism in all of its naked and brutal evil.

Extent of the blacklist

In its final decisive aspect, namely, the scope of the blacklist, the act is likewise hopelessly vague and indefinite. Under the terms of the proposed bill the blacklist would apply to any plant in the country which is designated by the Secretary of Defense as being a defense facility. There is no guide in the statute whatsoever for the Secretary of Defense as to what is and what is not a defense facility. In an amazing sleight of hand the bill tosses the definition to the McCarran Internal Security Act. One would expect to find, therefore, in that act, a well-defined elaboration of precisely what is to be considered a defense

facility. However, upon examination of that act one discovers no definition whatsoever. Under the terms of that statute the Secretary of Defense has unlimited power to designate any plant anywhere in the United States as a defense facility. Within the framework of this triple play, Brownell to McCarran to the Secretary of Defense, the blacklist proposed can be extend to any plant in the country regardless of the objective nature of the work there done. If the Secretary of Defense determines that a plant manufacturing baby carriages is a defense facility because at some point its machinery can be turned over to armanent production, then the Secretary of Defense may classify that plant, admittedly nondefense in nature, as a defense facility. Under the terms of the act proposed, the discretion of the Secretary of Defense is absolute. He is given completely dictatorial power to designate any plant or factory anywhere in the United States as a defense facility.

The vagueness of any one of these three questions would be enough to render the statute unconstitutional. The combination of all three creates in the proposed legislation a constitutional monstrosity. Such an act should be stricken as violative on its face of the fifth and first amendments to the Federal Constitution (*U. S.* v. *Cohen Grocery Co.* (255 U. S. 61); *International Harvester Co.* v. *Kentucky* (234 U. S. 216); *Connally* v. *General Construction Co.* (269 U. S. 385); *Lanzetta* v. *New Jersey* (306 U. S. 451); *Musser* v. *Utah* (333 U. S. 95); *Winters* v. *New York* (333 U. S. 507).)[1]

A statute as vague and indefinite as the one proposed by the Attorney General is especially dangerous when it encroaches upon the protected liberties of the first amendment. Vagueness condemned by the fifth amendment in the field of political liberty renders the statute violative of the first amendment. (Compare *Thornhill* v. *Alabama* (310 U. S. 88); *Winters* v. *New York* (333 U. S. 507, 509, 510); *Stromberg* v. *California* (283 U. S. 359, 369); *Herndon* v. *Lowry* (310 U. S. 242, 258).) Vague and indefinite language such as the type used in this statute would permit punishment for activities obviously within the protected orbit of the first amendment. At a minimum, a statute which impinges upon this area must be narrowly and precisely drawn. (*Schneider* v. *State* (308 U. S. 147); *Cantwell* v. *Connecticut* (310 U. S. 296); *DeJong* v. *Oregon* (299 U. S. 353).)

THE ACT CONTAINS NO ADEQUATE PROCEDURAL SAFEGUARDS

Compounding its constitutional infirmity, the proposed legislation provides no adequate procedural safeguards for a worker threatened with loss of his livelihood. The proposed act authorizes in a very general way the promulgation of regulations ostensibly designed to notify individuals of charges against them and to provide them with an opportunity for defense. However, the procedures set forth fall far short of constitutional requirements. The proposed act states that "nothing contained in the act shall be deemed to require any investigatory organization of the United States Government to disclose its informants or other information which in its judgment would endanger its investigatory activity." Needless to say, this provision completely negates any offer of a hearing on the so-called charges to a worker threatened with blacklisting. It enables the blacklisting agency completely in its own discretion to decline to give a worker faced with economic execution any information whatsoever concerning the nature of the charges against him.[2] Such a "hearing procedure" falls far short of elementary standards required by the due process clause. (See *Joint Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123.) Moreover, the entire "hearing procedure" is rendered meaningless by the failure to provide for judicial review. To rest ultimate disposition of the life and death question of employment with the agency which makes the initial determination of blacklisting makes a mockery out of the concept of due process. It is quite apparent that the Attorney General in drafting this bill was anxious to exclude the

[1] The statute in substance violates the Constitution in a number of other serious ways. For example, it is clearly an unconstitutional delegation of legislative powers. See *Schechter Poultry Corp.* v. *U. S.* (295 U. S. 495), in that it vests sweeping and absolute power in the Executive without adequate, well-defined standards and criteria to guide administrative action. Likewise, it violates the equal protection clause. See *Yick Wo* v. *Hopkins* (118 U. S. 356, 366).

[2] Recognizing the constitutional infirmity of this provision, Mr. Brownell attempts to correct it by proposing that in the event "such information is not disclosed the individual charged shall be furnished with a fair summary of the information in support of the charges against him." This is utterly meaningless. Who can tell whether the information given is a "fair summary of the information in support of the charges against him" when the information is secret?

courts completely. This, of course, he cannot do under the Constitution. The right to the protection of due process of law includes the right to judicial review of a determination which deprives one of a property right as fundamental as the right to work. (*Stark* v. *Wickard*, 321 U. S. 288; *Social Security Board* v. *Nierotko*, 327 U. S. 358.)

CONCLUSION

The proposed legislation as drawn up by Mr. Brownell is in wanton disregard of elementary constitutional requirements. He has thrown all legal and constitutional principles to the winds in his effort to obtain legislative sanction for the creation of a system of blacklisting which will extend across the entire country, entering the homes of hundreds of thousands and even millions of American working people. If constitutional guaranties have any meaning whatsoever this bill must be rejected.

Mr. WALTER. I certainly do not know who ever gave you the idea that issuing this kind of release in advance of your testimony is going to help your case to any extent. Do you speak for the organization that was expelled from the CIO?

Mr. NIXON. As you well know, Mr. Walter, I speak for the United Electrical Radio Machine Workers of America that formerly was in the CIO, and is no longer in the CIO.

Mr. WALTER. Expelled because it was dominated by Communists.

Mr. NIXON. I would not agree to that formulation of it, sir.

Mr. WALTER. Isn't that the reason why the CIO expelled your union?

Mr. NIXON. I don't think it is. I don't know whether——

Mr. WALTER. Isn't there a resolution somewhere?

Mr. NIXON. That is what they say was the reason. That is what they say.

Mr. WALTER. Who were the officers in the union at the time the resolution of expulsion was adopted?

Mr. NIXON. We withdrew from the CIO before the action that you refer to was taken. The officers of the union at that time were the officers who have been the leadership of the union since 1941.

Mr. WALTER. Who were they?

Mr. NIXON. Mr. Fitzgerald, Mr. Emspak and Mr. Matles.

Mr. WALTER. Who were Emspak and Matles?

Mr. NIXON. Mr. Emspak is the general secretary-treasurer of the union. Mr. Matles is the director of organizations. Mr. Fitzgerald is the president.

Mr. WALTER. Where is Fitzgerald from?

Mr. NIXON. Where is he from? His home is in Lynn, Mass.

Mr. WALTER. Not from Pittsburgh?

Mr. NIXON. No, sir. That is Fitzpatrick you are thinking about.

Mr. WALTER. Now Emspak and Matles were both convicted of conspiring to overthrow the Government by force and violence, were they not?

Mr. NIXON. I beg your pardon?

Mr. WALTER. Were they convicted of the crime of attempting to overthrow the Government through force and violence?

Mr. NIXON. Coming from you, sir, that is an amazing statement.

Mr. WALTER. I say, were they?

Mr. NIXON. They have never been charged with it. You know our organization better than that, sir.

Mr. WALTER. No; I don't, frankly. Are you a member of the Communist Party?

Mr. NIXON. No, sir; I am not.

Mr. WALTER. Have you ever been?

Mr. NIXON. No.

Mr. WALTER. You certainly have gotten off on the wrong foot——

Mr. NIXON. I have hardly gotten off.

Mr. WALTER. You talk in your statement about a sneak blitz. I don't like that. I have never been a party to that sort of thing and there isn't a member of either the subcommittee or the full committee that would be a party to anything of this sort. We have never rushed through legislation in this committee without the most careful consideration.

Mr. NIXON. I wonder, Mr. Walter——

Mr. WALTER. It is just not a nice reflection on the integrity of the men in this committee. The chairman of this subcommittee happens to have been a former United States attorney, serving in both Democratic and Republican administrations because of his fairness, and the very second sentence of this press release before you have said a word is a reflection on this committee. I don't like it.

Mr. NIXON. I wonder if you would let me develop my argument and my point with regard to the particular point about hearings. I think if you would——

Mr. WALTER. I know all about that. We notified the A. F. of L., the CIO, the various bar associations on yesterday or the day before yesterday. We sent notices to all of the bar associations, so that is far from being a sneak blitz.

Mr. GRAHAM. May I make a suggestion? What do you say we allow Mr. Nixon to go ahead and develop this and then later on we will question him on this.

Mr. NIXON. That is perfectly all right. As a matter of fact, you will find I will say something about this very shortly.

Mr. GRAHAM. Proceed. Will you then epitomize the best you can your statement.

STATEMENT OF RUSS NIXON, UNITED ELECTRICAL WASHINGTON REPRESENTATIVE, UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS OF AMERICA (UE)

Mr. NIXON. My statement is presented on behalf of the United Electrical Radio and Machine Workers of America. It is a labor union that has been democratically chosen to represent more than 300,000 workers in the electrical, radio, and farm equipment industries of America.

We appear in opposition to two bills which you are considering—House Joint Resolution 528 and House Resolution 527. I believe that I am the first person to comment upon these bills in any shape or form, although the Attorney General a couple of months ago made general reference to the intention to introduce such legislation.

We have previously appeared before other committees of the Congress in opposition to a wide range of legislative proposals dealing with the proposition that that legislation should be enacted limiting the right of workers to choose their own unions, choose their own union leadership, and to enjoy complete personal political freedom and liberties.

I would only urge you that in your considerations you pay attention and refer to this previously given testimony which we will not now at this point restate.

In considering these bills, ladies and gentlemen of the committee, we feel you are being called upon to make an extremely grave decision of far-reaching and unprecedented import, fundamentally affecting the elementary rights and liberties of the American people. What is it that Congress is being asked to do in these two proposed bills? Congress is being asked to repudiate the traditional democratic principles of freedom of expression, free association, government by law rather than by men, the doctrine that guilt is personal and not due to association, principles upon which our American free society has been based since 1789.

You are being asked instead of preserving these rights to give appointed Government officials the power to liquidate free associations, to censor and punish individuals for their own political views as well as those of their associations, and thus to impose a reign of censorship, repression, and fear upon the American people.

You are being asked to destroy the right of workers freely to choose their own unions and their union officers, and thus to destroy the freedom of the labor movement by taking its control from the working people and placing that control in the hands of bureaucrats appointed by Government.

Together with repressive legislation and practices already in effect, House Resolutions 527 and 528 would complete the legislative package which can only be correctly described as the enabling legislation for the establishment of fascism in the United States. If this seems to be an extreme observation, I earnestly request you to consider carefully the following document, which is the official United States Government translation of the first basic Nazi decree abrogating the essential features of the democratic constitution of Germany. You will see that you have this document before you.

The first section of it says that certain changes are going to be made in the German Constitution "as a defensive measure against Communist acts of violence endangering the state." Then it proceeds to say that certain sections of the constitution of the German Reich are suspended until further notice. It says in this official document:

> Thus restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephone communications, and warrants for house search, orders for confiscation as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed.

Signed on February 28, 1933, by von Hindenberg, Hitler, Frick, and Gurtner. It seems to me impossible to fail to be deeply concerned about the deadly parallel that this document presents to the legislation being considered. We believe that the proposals advanced by Mr. Brownell raise questions so fundamental to the continued existence of the United States as a free nation, so far-reaching in their effects upon the future lives and welfare of all Americans, as to require the gravest and most deliberate scrutiny and consideration and the broadest public discussion.

I am now coming to the point that Congressman Walter raised at the outset.

We urge this Judiciary Committee—I want you to be particularly aware of the way I put this to you, sir—urge this Judiciary Committee to reconsider your intention to terminate these hearings after only 2 half days of testimony——

Mr. WALTER. Where did you get the idea that was the position of this committee?

Mr. NIXON. We have been repeatedly told that by the staff of this committee, Mr. Walter.

Mr. WALTER. Only on yesterday we discussed at great length the future project hearings.

Mr. NIXON. Sir, if you have acceded to our protests about this yesterday——

Mr. WALTER. We have not done that. We had already taken the position that we were not going to cut off hearings.

Mr. NIXON. Mr. Walter, believe me, you know me well enough to know that I am not making this up out of thin air. We have been told that hearings are terminating on Friday. Several other organizations have been told that they cannot be heard because the hearings are terminating on Friday, and that if they wish to do anything with regard to this, they must submit their statemens by Friday.

If this is changed, I take my hat off to the committee and say you have already done what we have urged. But, believe me, up until this moment, we have heard nothing except that these hearings are to terminate on Friday, and this in the most positive terms.

Mr. WALTER. I don't care what you have heard. The committee never took that position, Mr. Nixon, and I am certain that you have not influenced us in reaching any decision.

Mr. NIXON. I don't care how you reached the decision, sir. I can only restate what I am urging you here, that you have full hearings. Mr. Walter, for example, Mr. Brownell has not appeared before this committee on these bills. There has been no responsibile representative of the administration to appear on these bills. Mr. Brownell appeared on April 12 in a general package discussion of legislation. He said 70 words on one of these bills, and 40 words on another of these bills. You could not have questioned him about this. You could not have inquired about the bill, because the bill was not in your hands.

I understand that Mr. Brownell is not planning to come to this committee and that he is not to appear in public for inquiry about the bill. I understand further that there is no plan to call the Secretary of Labor about this legislation which so vitally affects——

Mr. WALTER. You know more about this committee than I do.

Mr. NIXON. Sir, I would be delighted——

Mr. WALTER. I am very happy to get this information, but I tell you that it is entirely erroneous.

Mr. NIXON. Very fine. No one will be happier to be proven erroneous about this than I am. Our suggestion is very simple, then; that is, that in legislation of this tremendous import, this tremendous import, full hearings must be held. Public hearings must be announced——

Mr. GRAHAM. Just a minute, Mr. Nixon. We are not required to give public notice. We met in pursuance of the legislation introduced here. We hold open hearings. You are having your opportunity today. We have heard a member of the Communist Party. We have heard Mr. Thomas. We have heard all sides. That is utterly untrue and false when you make that statement and I charge you with it.

Mr. NIXON. Sir, I am talking about H. J. Res——

Mr. GRAHAM. I am talking to you, that is who I am talking to.

Mr. NIXON. I am talking to you, sir.

Mr. GRAHAM. You go on and proceed and keep it in bounds. You will not run this meeting. You get that in your head quickly and earnestly.

Mr. NIXON. You will find I will speak to you with utmost respect.

Mr. GRAHAM. Don't you make any charges like that.

Mr. NIXON. You will find that I will also speak freely as I think I must about the issue before this committee, and I am saying to you that no person before me has appeared to discuss these two measures which the administration says are of utmost importance to it and upon which it puts great priority. I am respectfully requesting of you, of the entire committee, that you make sure that the appropriate and responsible representatives of the administration appear before this committee to answer your questions.

When Brownell testified before you here——

Mr. HYDE. Mr. Chairman, might not we have the witness talk to the bills? I would like to hear what he has to say about the language of the bills.

Mr. GRAHAM. I guess we have got rid of all the extraneous matter. Will you come to the bill, please?

Mr. NIXON. I am talking about a question that was raised before I had a chance to say a word, by the committee, sir. I am talking about something that seems to me to be urgently important, and that is that there be adequate hearings on this legislation. Regardless of what your views may be about it, it seems to me——

Mr. GRAHAM. You are laboring the point again. Mr. Walter has told you, and has told you frankly and honestly. Why do you belabor that point? Why don't you confine yourself to what you came here to testify on. We are willing to hear you and will be glad to examine your statement. But you keep going over and over and justifying your own position all the time and telling us, the members of the committee, in substance that we are a packed committee and we resent that.

Mr. NIXON. Of course, sir, I have not said that, and nothing that you have in writing before you justifies that.

Mr. GRAHAM. Go ahead.

Mr. NIXON. I think my point on the hearings is perfectly clear, and I will be more than pleased if you go ahead to have full hearings on this question.

Mr. WALTER. For about 10 years.

Mr. NIXON. Of course that is not true with regard to these two bills. On that formula you could pass a labor bill without any further hearings, saying "We have had hearings for a hundred years."

You know you have hearings on bills, and you discuss the language of bills. No one said before this committee before that here was a bill that calls for the liquidation of organizations.

Mr. GRAHAM. Would you please come down to the bill and tell us why you oppose it? That is what we want to know.

Mr. NIXON. I shall do my best to let you know that, sir. Briefly summarized, the bills that you have before you provide as follows: One is House Joint Resolution 528, a bill to provide machinery to

liquidate Communist-controlled organizations which are in a position to affect adversely the national defense or national security.

Under this bill, House Joint Resolution 528, the Attorney General and the majority of the members of the Subversive Activities Control Board, using undefined, subjective and political tests, may label any organization—any organization—Boy Scout troop, PTA, political party, newspaper, union, any organization in the country—"Communist infiltrated"——

Mr. WALTER. In section 2, subparagraph (d) (1) when you say that the Attorney General can label the Boy Scout movement as Communist, I am afraid that you haven't seen the yardstick that is set up in the bill.

Mr. NIXON. What section are you referring to, sir?

Mr. WALTER. I am referring to section 2, page 5 (d) (1).

Mr. NIXON. That says "any organization." It may find any organization Communist infiltrated. That is the point I am making.

Mr. WALTER. Yes, but after taking into consideration all of these things set forth, it may well be that this doesn't go far enough in defining activities. That is what we are interested in learning about. How can we safeguard the interests of the innocent people, and at the same time accomplish that which at long last we are attempting to accomplish?

Mr. NIXON. Of course the first point I was making is that this bill is directed at any organization—any organization—political party or any other kind of an organization; that when it is so labeled, it shall compel—and this is what the Attorney General calls substantial liabilities—shall compel—and I quote it from the bill—"the expeditious dissolution, liquidation, and winding up of its affairs and the component parts of the organization."

The standards by which this death-sentence label is to be applied are tailormade to fit the political and economic bias of the four Government appointees necessary for the decision. The death sentence rests upon guilt by association, the political views and associations of the organization, its members and its leaders, and upon imponderable judgments about the meaning of phrases such as the "extent to which," "substantially directed," et cetera.

Immediately following the SACB agency decision, and prior to any appeal, the organization-death sentence is to be carried out through the prohibition of any individuals listed as proscribed from further relationship to the organization.

Mr. HYDE. Right on your point, on page 2, you say applied to any organization.

Mr. NIXON. Right.

Mr. HYDE. On page 2 it defines a Communist-infiltrated organization, with two terms, A and B you will find there in the first paragraph of page 2, B of which is "is in a position to affect adversely national defense or security of the United States."

Mr. NIXON. Right.

Mr. HYDE. You say that applies to the Boy Scouts, too?

Mr. NIXON. I say it could, sir.

Mr. HYDE. No further questions.

Mr. NIXON. I am not a lawyer, but I suspect that any of you as a lawyer would agree that there is such vagueness in that phraseology

as to permit the widest application in the terms of the particular phrase which you mentioned.

Mr. HYDE. I just want to get your argument. You say that does include the Boy Scouts?

Mr. NIXON. Yes, sir.

Mr. HYDE. No further questions.

Mr. CELLER. It must be a Communist-infiltrated organization, must it not?

Mr. NIXON. Yes, sir, Mr. Celler.

Mr. CELLER. What do you gather from this bill to be the requirements before a conclusion can be reached that an organization is Communist infiltrated?

Mr. NIXON. The requirements, of course, are set up in the bill on page 2, as Mr. Hyde has just mentioned, and a certain number of tests or guides to tests on page 5 and 6. They are the standard tests which are applied in the Subversive Activities Control Act of 1950. Substantially that is what they are. They are responsibility by association, the political views and associations of the organization, its members and leaders, and as I have said, upon imponderable judgments about the meaning of phrases such as the "extent to which," "substantially directed," and so forth.

Mr. WALTER. What would you substitute for that?

Mr. NIXON. What would I substitute?

Mr. WALTER. Yes. What would make that clear?

Mr. NIXON. I don't believe, you see, that you should be passing legislation based upon the political views, attitudes of people or organizations of any sort. That is, of course, my view.

Mr. WALTER. Even though those political views are in conflict with views that are regarded as being to the best interests of the United States?

Mr. NIXON. Precisely, precisely. Views should not be punished in this country of ours. That is one of the most basic principles of our country, that you punish illegal actions. If you want to put your finger on the core of opposition to this legislation, it is precisely that, that you cannot punish speech or advocacy or views or opinions, and this legislation does.

Mr. WALTER. Let's follow that to its logical conclusion. Then, in order to accomplish that which is sought to be accomplished in the enactment of this legislation, we should strengthen the second section of the Smith Act by making it abundantly clear that membership in the Communist Party is a crime.

Mr. NIXON. I feel the same way, that Justice Black and Douglas, and I think Frankfurter and Jackson feel on this issue, that it is a mistake to try to institute criminal characterization of political views or advocacy, that the solid foundation of our democratic system must be punishment for actions, and that once you depart from that, you start down an extremely dangerous road.

Mr. WALTER. The malum prohibitum membership in the Communist Party—there is the action. So I would say that would be the very simple solution to this whole thing.

Mr. NIXON. Your proposition, of course, is tautological. You are saying you are going to make it criminal to be a member of the Com-

munist Party. That makes no sense whatsoever. There should be no criminality attached to any association.

Mr. WALTER. It is not malum per se to drive an automobile 40 miles an hour through the park here, but it is a crime, nevertheless.

Mr. NIXON. Do you wish to compare the question of public prohibition of attitudes and public opinion with the speed laws of America? I certainly couldn't agree with that, sir.

Mr. CELLER. In the Smith Act, there must be more than a mere view or expression of views. There must be something akin to an overt act. It may be, as Mr. Walter says, membership in the Communist Party, but they must be more than views.

Mr. NIXON. I don't know what you mean by "something akin to an overt act." The fact, of course, is that there was no overt act.

Mr. CELLER. All right. There should be something more than views. Isn't that correct?

Mr. NIXON. Yes, sir. There was advocacy.

Mr. CELLER. Even under the interpretation of the Smith Act?

Mr. NIXON. There was advocacy of those views.

Mr. CELLER. Whatever it is. There must be views plus something else, is that right?

Mr. NIXON. Plus advocacy.

Mr. GRAHAM. The first word is teaching—advocacy.

Mr. NIXON. Yes, advocacy.

Mr. CELLER. Then we speak of Communist-infiltrated organizations, and would this be a Communist-infiltrated organization according to the definition embodied in this bill where you have a union, say, of 25,000 or 30,000 members, and 1 or 2 members are Communists and they at their meetings or at their conventions exert considerable influence? Would you say that is a Communist-dominated or -infiltrated, or rather a Communist-infiltrated union?

Mr. NIXON. I would say that it was not, but the point is not what I would say. The point is that under this law——

Mr. CELLER. I asked you whether in your opinion is that definition that we have on page 2 broad enough to cover that situation?

Mr. NIXON. In my opinion it certainly is.

Mr. WALTER. How do you reconcile that, then, with the language on page 5, line 17?

Mr. NIXON. The extent to which persons are active in its management, direction and so forth. I am glad you raised that, Mr. Walter, because this gives an opportunity to underline the vagueness and therefore the potential maladministration and extensiveness of the liquidation process here. The "extent to which" is an undefined term.

As a matter of fact, in the hearings on the Mundt-Nixon bill, the chairman of the Senate Judiciary Committee, Senator Wiley, asked for comments on that legislation—a very excellent procedure which I recommend to this committee—and they elicited from various outstanding constitutional authorities comment upon this legislation.

If you will see in my brief, on page 5, there is a quotation from John W. Davis, who directs himself precisely to this question of "the extent to which"—and he makes the point, of course, that it is so vague that, as he says, there is no application of any doctrine of de minimis, that it leaves open the possibility of the broadest type of condemnation. This is precisely the point.

Mr. CELLER. The words that are used on page 5 in connection with the determination of whether an organization is Communist infiltrated, is as follows:

The extent to which persons who are active in its management or direction or supervision are members of any Communist action or organization.

That would mean that the Subversive Activities Board could determine that if 1 or 2 members of the organization need not be—that is, that they need not be officers of that union or active in the management or in the making of policy of that organization—yet that would be Communist infiltrated? Is that correct?

Mr. NIXON. That would be my interpration of it, sir. Yes, sir.

Mr. WALTER. The point is this. It even goes further than that because the language says "whether or not he is an officer." He doesn't have to be an officer.

Mr. CELLER. I said that. He doesn't have to be an officer. It is interesting to note, Mr. Chairman, that the American Federation of Labor has put out a bulletin through its Labor's League for Political Education, and I find this significant passage therein:

Communist infiltrated is a new concept. It does not mean Communist front or Communist dominated. It just means having one or more employees on the payroll who might be judged by very loose standards to be security risks if the board—

that is the Subversive Activities Board—

decided the business or union was infiltrated, then it would order the complete liquidation of that business or union.

Do you take it that this bill is aimed not only at the union that might be Communist infiltrated, but is also aimed at the employer, at the business that hires the members of this Communist infiltrated union?

Mr. NIXON. Yes; I think it is aimed at much more than that. I think it is aimed generally at the entire labor movement. You have opposition by the entire labor movement to this type of legislation.

Mr. CELLER. We haven't had much evidence of that. The labor movement has not given us any great degree of manifestation in that regard.

Mr. NIXON. Mr. Celler——

Mr. CELLER. I do hope that the American Federation of Labor and the CIO will come out forthrightly and give us their point of view on this matter, and particularly on the sections I have been directing my attention to, namely, on the use of the words "Communist infiltrated," and whether they have any perturbation concerning the use of any attitude, which is expressed by the word used in the bill, so that even a business might be covered, and what will flow from that is that the Subversive Activities Board will have the right to go into a business and seize the property and assets of that business if it deems it to be Communist infiltrated.

I wonder whether or not that conclusion could be drawn, namely, that the business itself is Communist infiltrated if there is a union supplying that business with me, which is in turn Communist infiltrated. I think if that is true, we are traveling on very dangerous waters.

Mr. NIXON. You know the Wall Street Journal had a major editorial on the first of June objecting to this entire package of legis-

lation, and among the reasons they urged was precisely this, that this could go to the broadest possible extreme. To be fair to the Wall Street Journal, they did not limit it to that. Their objection was categorical, particularly to the infiltrated organizations bill. But they had this point in it.

Mr. CELLER. Would this mean in your opinion that the Subversives Activities Board could go in and seize the property of the business and of the employer?

Mr. NIXON. It specifically provides for that in this law, that they shall assign administrators, receivers, for the proscribed organization after the order becomes final. It specifically provides for that.

The section of the law is on page 7, beginning with line 23—

approve the individuals who shall exercise functions and duties in connection with the dissolution and liquidation of the organization and its component parts.

The liquidation provisions are complete and unqualified.

Mr. CELLER. That would mean that if I were in a business and I was compelled—I use the word advisedly—compelled to treat with the Communist infiltrated organization because in these matters you might not have any choice, the workers would vote to remain in the Communist infiltrated union under the present status, and therefore, since I would be compelled to use that union, I myself might have held over my head a sort of Damocles sword, that unless I got rid of that union, my assets would be filched from me, and the representatives of the Subversive Activities Board would barge in and take my business and take my goodwill.

Is that your interpretation?

Mr. NIXON. That certainly is a possibility under this act. I do not think that is the main intent of this act, or would be the main target. But it is certainly possible. There is no limitation virtually to the application of this liquidation process.

Mr. CELLER. It is true, is it not, if the vote is taken by the laboring men to remain in the union, I as an employee have no choice in the matter, have I?

Mr. NIXON. No, except, sir, that under this bill, the Government would presumably liquidate organizations which it felt to be Communist infiltrated. It would be inconceivable that they would charge a business dealing with a Communist infiltrated organization because under the very terms of the law here, they would undoubtedly have proceeded against that organization in the first place.

It seems to me that that is logical to presume, although the other possibility exists.

Mr. CELLER. Could there be this interpretation, with these facts? You have a business. The man may be law-abiding. He may not be a Communist at all. He is the boss of the shop, but he has this union, which is Communist infiltrated. Could a conclusion be drawn by the Subversive Activities Board that that business is Communist infiltrated?

Mr. NIXON. I should think so. As a matter of fact, the charges have been made throughout the country against some corporations that they are playing "footsy" with Communists.

Mr. CELLER. And that is so, despite the facts that the employer had no choice in the matter?

Mr. NIXON. That is true. That is what the corporations say, but the charge persists. It exists right now. We know about that. May I just say one word about——

Mr. WALTER. May I ask this question. Would it not be possible for an employer in his desire to get rid of the labor union to deliberately employ Communists so as to liquidate the union?

Mr. NIXON. That is possible, and as a matter of fact, that is one of the bases upon which the labor movement objects to this type of legislation. I would just for the record, sir—since you raised the question of the opposition by the labor movement—let me just for the information of the committee say this general type of legislation began to be considered in Congress in the spring of 1952, when Senator Humphrey held hearings with a subcommittee of the Senate Labor Committee on this question generally. Hearings were held before the Senate and House Labor Committees on the Goldwater-Rhodes legislation, which is very comparable. Then hearings were held by the Butler subcommittee of the Senate Judiciary Committee on three bills that are comparable.

I want to make the point to this committee that without a single exception, every branch of the labor movement, regardless of our obvious bitter internal differences, has gone on record repeatedly against this legislation. If you get their views here before this committee, and they are given an opportunity to come and testify, unquestionably you will have the complete opposition of the American Federation of Labor, the CIO, and independent unions to this type of legislation, and to this legislation specifically.

I think the record is very full with regard to this.

Mr. CELLER. You have made a study of this bill probably more than I have. I have only gone over it cursorily. On page 8 we find this language, line 18:

> In exercising its powers under subsections (b) and (c) of this section, the Board shall take into consideration, and to the extent it determines it to be consistent with the purposes of this act preserve the legitimate rights and interests of the members, stockholders, or other participants in such organization—

Is there anything in the bill which can be deemed to guide for the Subversive Activities Board to follow in the preservation of the rights of stockholders?

Mr. NIXON. No. I think there is nothing more than this. There is some specific matter with regard to trade-union contracts and terms, but not, I think, with regard to stockholders.

Mr. CELLER. The reason why I point out stockholders, I take it, it presumes something in the nature of a corporation, and that probably means the employer in contradistinction to the union.

Mr. NIXON. No question about it.

Mr. CELLER. So that the Board would have more or less complete control in that regard if we pass such a bill with this kind of language control over the stockholders' rights and interests.

Mr. NIXON. That is right.

Mr. CELLER. Without a sufficient guide laid down by Congress.

Mr. NIXON. There is no question about that, although I think that the main emphasis is directed at trade unions rather than business.

Mr. GRAHAM. Mr. Hyde?

Mr. HYDE. Mr. Nixon, I am going to change the tack here a little bit and get to something which I consider a bit more fundamental, which has worried me in connection with not only this bill but all the bills on this subject. Let me start by asking you this question: If there were a person or a group of people outside of your home who said they wanted to get into your home for the purpose of throwing you out or destroying your home, do you think you should have the protection of the police against that person?

Mr. NIXON. What were these people doing? They were outside my home?

Mr. HYDE. Outside your home, threatening to throw you out of your home, to destroy your home by force and violence. Do you think you should have the protection of the local police and legal protection of the police and things of that sort?

Mr. NIXON. I should think that that might come within the bounds of some police action, criminal conspiracy, or something of that sort. I would not, to follow you through to an analogy, I presume that you want to make, that this applies then to the advocacy of unpopular and unorthodox——

Mr. HYDE. Wait a minute. You are assuming something that I have not gotten at.

Mr. NIXON. I am very happy that that was not your intent.

Mr. HYDE. You think you should have that protection. Is it not true that the Communist Party has said its intention is to overthrow our form of economy and government by force and violence? Have they not so declared in their official publications?

Mr. NIXON. You know that is a very large subject and I am not an expert on the Communist Party. I know enough to know that that is the assertion of the Government in the Smith Act trials, that the language I think——

Mr. HYDE. Are you saying now that you have never read that in any Communist publication?

Mr. NIXON. Read what you said?

Mr. HYDE. Yes.

Mr. NIXON. No; I have never read that.

Mr. HYDE. You have never read it was the intention of the Communist Party, as expressed by its leaders in the Kremlin, to overthrow our form of economy and government by force and violence? You have never heard of that?

Mr. NIXON. No. Have you ever read that, sir?

Mr. HYDE. Yes, sir.

Mr. NIXON. I would be very interested in such a citation and I am sure the Department of Justice would be delighted to have it. They haven't been able to find it. It would be very helpful to them if you could let them know where that kind of a statement——

Mr. HYDE. I am sure they have.

Mr. NIXON. Then they should have used it.

Mr. HYDE. Is it not a fact that the courts of this country have found that that was the purpose and intent of the Communist Party?

Mr. NIXON. What the courts found in the Smith Act, in the Smith trials, is that they had conspired to organize the Communist Party as a society of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence."

Mr. HYDE. Let me ask you this: Have you ever known anyone to be prosecuted or any law offered in Congress that put anyone in jail or outlawed them for advocating a graduated income tax?

Mr. NIXON. I have heard that referred to as Communist and Socialist, but I don't think people have been put in jail for it. They may have.

Mr. HYDE. Have you ever heard anyone being prosecuted or any law offered in Congress to prosecute someone or to find him guilty of a crime for advocating public ownership of private property?

Mr. NIXON. I think the legislation before you would consider that part of the evidence.

Mr. HYDE. That is your conclusion. Have you ever known any specific law offered for that specific purpose?

Mr. NIXON. Offered for that purpose?

Mr. HYDE. Yes.

Mr. NIXON. I really couldn't answer that.

Mr. HYDE. Have you ever known of it to be introduced, then, for that purpose?

Mr. NIXON. I could not say whether there has been such a law ever introduced anywhere in this country.

Mr. HYDE. Have you ever heard of it?

Mr. NIXON. No; I haven't.

Mr. HYDE. Mr. Norman Thomas, for example, with his Socialist theories, was he ever prosecuted?

Mr. NIXON. I don't know.

Mr. HYDE. For his political theories?

Mr. NIXON. I suspect he was.

Mr. HYDE. You don't know, though, do you?

Mr. NIXON. Well, I don't want to off the cuff attempt to cover the record of Norman Thomas. I suspect he has been in jail and been prosecuted for his political views. There is no question about that.

Mr. HYDE. The point I am getting at is this, Mr. Nixon. I think it should be made abundantly clear to the witnesses before this committee and to the country, that this Congress is not trying to find anyone guilty of a crime for advocacy of a political theory. They are trying to protect themselves against people who have threatened to overthrow the Government through force and violence, a group of people who do not permit freedom within their own system, and when they are in their own organization, they do not permit all this freedom of speech and freedom of assembly about which you plead so urgently.

Mr. NIXON. And so sincerely.

Mr. HYDE. That is what this Congress is trying to get at, sir, and not the suppression of any political theory.

Thank you, Mr. Chairman.

Mr. NIXON. Very well, then, you and I can meet on a common ground to discuss this legislation, sir.

Mr. HYDE. That is what we are trying to get at in this legislation, too.

Mr. CELLER. I noticed the statement made by the president of the A. F. of L., George Meany, before the Senate Labor Committee last year. He said, and I want your comment on the quotation:

I studied Senator Goldwater's amendment very carefully. The Attorney General cites a member, an employee of a union to the Subversive Activities

Board. If that employee is found guilty of knowingly participating in an organization known as a Communist-front organization, the entire union is penalized. What it adds up to is a Government board licensing unions. We will be up to the mercies of individuals that might have some bias in the matter.

What is your comment?

Mr. NIXON. That is the same position that we have. It is the position of the entire labor movement on this type of legislation. The proposition is simply that the trade-union movement does not trust anyone in the Government to have the power to take the place of the unqualified right of workers to choose their own unions and to choose their own union officers. That is the position of the entire labor movement.

Mr. HYDE. Do you think that the labor unions or any other nongovernmental organization should have full control over who is prosecuted for attempting to overthrow this Government through force and violence?

Mr. NIXON. I think that anyone who attempted to overthrow this Government by force and violence should be prosecuted to the full extent of the law and put in prison. There is just no question about that, Mr. Hyde. Of course that is not what we are talking about.

Mr. HYDE. I disagree with you on that.

Mr. NIXON. Then if you will read the legislation and show me where that is in this legislation, I would be most interested to see it.

Mr. HYDE. Do you not think that the Government should have the authority to dissolve any organization which is controlled by people who advocate, teach, aid, and abet the overthrow of the Government through force and violence?

Mr. NIXON. I certainly do not think that the Government should have the authority to dissolve any organization that is not engaged in criminal activities, Mr. Hyde.

Mr. HYDE. Sir, that is not my question. My question was: Do you not think that the Government should have the authority to dissolve any organization which is controlled and dominated by persons who advocate, aid, teach, and abet the overthrow of Government through force and violence?

Mr. NIXON. My point, then, is no, I do not think so.

Mr. HYDE. You do not think the Government should have that authority?

Mr. NIXON. No, sir; I do not think the Government should have any authority to dissolve, liquidate any organizations not engaged in criminal activities.

Mr. HYDE. You do not consider a person who is advocating, aiding, teaching, and abetting the overthrow of Government through force and violence a criminal activity?

Mr. NIXON. No, sir; I do not. I take the same position as Justices Black and Douglas of the United States Supreme Court on that question.

Mr. HYDE. What do you state as their position? On that question?

Mr. NIXON. If you read their dissents, sir, you will find language which makes perfectly clear that they feel that this is not directed at acts, but is directed at opinions.

Mr. HYDE. That is a different question, what they feel it is directed at. I am asking you what you say their position is on the question I asked you.

Mr. NIXON. Yes, sir. This is from Black's dissent:

> At the outset I want to emphasize what the crime involved in this case is and what it is not. These petitioners were not charged with an attempt to overthrow the Government. They were not charged with any overt acts of any kind designed to overthrow the Government.

Mr. HYDE. That is not directed to the question, Mr. Nixon. That is their opinion as to what they were or were not charged with.

Mr. NIXON. Just let me complete the quotation. I think it will be just two sentences:

> They were not even charged with saying anything or writing anything designed to overthrow the Government, the charge was that they agreed to assemble and to talk and publish certain ideas at a later date. No matter how it is worded that is a virulent form of prior censorship of speech and press which I believe the first amendment forbids.

Mr. HYDE. That is your opinion as to what Justice Black and the others said about the question I asked you?

Mr. NIXON. Unless I misunderstood you, Mr. Hyde, it is. Of course I am picking off the cuff and fast, out of the dissenting opinions. I will be glad to take time and read some more.

Mr. GRAHAM. May the Chair say a word at this point, please. It is this: The witness has now consumed an hour and 10 minutes. We have three other groups here. Judge Musmanno of the Pennsylvania Supreme Court is here.

Justice, are you engaged in a hearing in Philadelphia or not? Can you spend any time or do you want to be heard today? I would like to inquire right now.

Mr. MUSMANNO. I would like to be heard today, if possible.

Mr. GRAHAM. I wonder if we could do this, without breaking the record or interrupting. Mr. Nixon, would you step aside for a minute? We will hear Justice Musmanno and then those witnesses who are here. It is simply a man who has come from a distance.

Mr. NIXON. Mr. Graham, I am most happy to do that. I don't mean to take more time of the committee than is justified.

Mr. GRAHAM. Justice Musmanno, will you come forward please?

STATEMENT OF HON. MICHAEL A. MUSMANNO, SUPREME COURT JUSTICE OF THE STATE OF PENNSYLVANIA, PITTSBURGH, PA.

Mr. MUSMANNO. I am very happy and proud indeed to be here, Mr. Chairman and members of the committee. I am addressing myself particularly to the subject of outlawing the Communist Party. So therefore I shall not avail myself of the privilege and pleasure of replying to many of the things said by Mr. Nixon, who represents what I feel to be the most dangerous organization that we have in the United States of America, because of its Communist-dominated policies.

I will proceed immediately to the subject which brought me here.

On April 12, 1954, the Attorney General of the United States, Hon. Herbert Brownell, Jr., appeared before your distinguished committee to voice his objections to proposed legislation providing for outlawing the Communist Party in the United States. With respect and deference to Mr. Brownell's high office and with appreciation for the sincerity of his intention to solve the problems presented by the Communist menace, I feel constrained to point out the fallacies in his

argument of April 12 wherein he assumed that the statutes at present on the books (with some suggested improvements) adequately meet the Red threat to our national security.

The views of the Attorney General are natually very important and are entitled to and do receive the profound consideration of Congress, as well as the people of the United States. However, insofar as recommendations for legislation is concerned, his arguments must be weighed in the same scales of logic, reason, and recognized law precedents as the scales which receive the arguments of the most obscure citizen in the Nation. As against the great prestige of his office which might of itself seem to supply the deficiencies in logic, law, and fact appearing in his statement of April 12, I have decided to reply to his presentation point by point and, where necessary, paragraph by paragraph.

Mr. Brownell states at the outset that he rests his case on the Internal Security Act of 1950, the Smith Act, and the immigration and naturalization laws, all of which of course have certain excellent features. The trouble is that, in the present state of world and national affairs, they are not sufficiently supported by a firm national policy which affirms and declares that the Communist Party is definitively an illegal organization.

The Attorney General says that the registration of Communist organizations under the Internal Security Act "will give us the means we seek to protect ourselves," but he does not say how it gives us those means and what are those means. In point of fact, governmental registration does a great deal of harm because it places the imprimatur of the United States Government on the party and all its subsidiary organizations.

Registration of Communists will not lessen the malevolence of Communists nor decrease the intensity of their traitorous nature in planning for world revolution. Registering a firearm does not guarantee that it will not be used in a criminal or illegal undertaking. The registered gun can still shoot and can still be used to kill innocent people. National Commander in Chief Wayne Richards of the Veterans of Foreign Wars summed up this phase of the case rather well when he appeared before your committee on June 2. He said that as the matter now stands:

> We lend a certain aura of respectability, a certain color of acceptability, to a philosophy and course of violent conduct [that] we totally and universally denounce.
>
> To us, this is an absurd contradiction for it is a partial tolerance of something we totally reject. We must not compromise with principle.

There might have been some attainable benefits through the registration of Communists were it not for section 4 (f) of the Internal Security Act which declares, as Mr. Brownell reminded you on April 12—

> that the holding of office or membership in any Communist organization shall not constitute in itself a violation of that act or any other criminal statute.

It is amazing to me how Mr. Brownell can point to this feeble reed in the Internal Security Act and call it an oak. Of what use is it to register the member of a criminal organization when the admission

of his criminality serves as ironplated immunity from prosecution? Mr. Brownell accentuates this immunity by adding that the—

registration cannot be received in evidence in any criminal prosecution against the person registered.

He thus emphasizes the utter worthlessness of the registration insofar as protecting the country is concerned. Although we know that the Communist Party in this country has but one object and that is the destruction of the Government of the United States, we cannot, under the Internal Security Act, use in any way the confession of a Communist that he is engaged in that very destructive process. It is simply phenomenal what happens to the machinery of thought when one insists on so self-destructive a proposition as that.

Mr. HYDE. Do you contend that we should not have any registration at all?

Mr. MUSMANNO. I contend that to register a criminal and then by that registration give him immunity is suicide.

Mr. HYDE. You don't think then we should have any registration?

Mr. MUSMANNO. They can have registration if they wish, but not give him immunity. That is like calling in a man who has committed a foul and heinous murder and taking his confession and then saying "Of course this will not be used."

Mr. HYDE. You concede that if we make membership a crime, you could not have registration under the fifth amendment, is that right?

Mr. MUSMANNO. You don't need registration, and that is the point I am coming to.

Mr. HYDE. You couldn't have it if you made it a crime, could you?

Mr. MUSMANNO. You couldn't have compulsory registration.

Mr. CELLER. As a matter of fact, Communists won't register, will they? They won't declare themselves that way, do they usually?

Mr. MUSMANNO. Under this act it would be the best thing in the world for them to register. They immediately wrap around themselves then the cloak of immunity by registering.

Mr. CELLER. How many have registered, Judge, do you know?

Mr. MUSMANNO. I don't know how many if any have registered.

Mr. CELLER. I say the Communists are not likely to register in any event, are they?

Mr. MUSMANNO. Of course they would register. They would be fools if they didn't. By going in and signing a book, they thereby immunize themselves from prosecution. What could be more desirable, and continue to operate to undermine our institutions of freedom and liberty.

It was never intended that the fifth amendment was to be consciously used to bolster the case of the criminal. Mr. Brownell points out that—

in the absence of such a provision (4f) the registration requirement might well be held to be a requirement that the person registering thereby give incriminating evidence against himself.

If by registering the Communist we offer him the weapon with which he can hold the prosecution at bay, are we not better off by not requiring him to register? By compelling the Communist to register you deprive the Government of the right to show that he is a Communist. How can such a proposition hold up in the logic and the principles of self-preservation? Mr. Brownell has to concede that

every member of the Communist Party is an enemy of the United States. By causing him to register we make it harder to convict him. Can anything be more foolish?

Mr. Brownell says—

that the enactment of legislation making membership in the Communist Party per se a crime would be in direct conflict with these provisions of the Internal Security Act.

Mr. CELLER. Would the judge yield a moment on that?

Mr. MUSMANNO. Certainly, Congressman.

Mr. CELLER. I take it, then, you would make membership in the Communist Party a crime; is that correct?

Mr. MUSMANNO. That is it exactly.

Mr. CELLER. Would you, then, outlaw the Communist Party?

Mr. MUSMANNO. Yes, by all means.

In his argument of April 12, Mr. Brownell does not address himself to any particular bill now before this committee, but generally refers to all legislation aimed at outlawing the Communist Party. As I have previously indicated, many of the bills at present before this committee are, in my respectful opinion, faulty, so that in replying to the Attorney General I naturally do not defend any of those indicated bills.

As I have already stated, I believe that H. R. 8912, introduced by the Honorable Martin Dies, of Texas, answers all constitutional requirements and will definitely and conclusively put the Communist Party of the United States out of business, a consummation devoutly to be wished by all liberty-loving Americans. Thus, in answer to Mr. Brownell's statement that legislation outlawing the Communist Party would be in direct conflict with the Internal Security Act, I will say that the Dies bill, H. R. 8912, would supplant the registration and other features of the Internal Security Act.

By operation of the Dies bill, a Communist becomes an outlaw in the same sense that an unapprehended burglar, robber, or murderer becomes an outlaw. Naturally, in those circumstances, it cannot be expected that he will register with the law. With the enactment into law of the Dies bill, the involved, expensive, slow-moving registration machinery in the Internal Security Act would become unnecessary and could be dismantled at once.

The Attorney General states that "if membership alone is made criminal, to require a member to declare his membership is to require him to give self-incriminating evidence." But, as I have just stated, the Communist, under the Dies bill, is not required to declare his membership. His membership, when established, becomes proof of his crime and he cannot plead the immunity of section 4 (f) of the Internal Security Act, as he can at the present time.

Mr. Brownell adds that making membership in the Communist Party a crime per se would nullify "all of the carefully drawn provisions of the Internal Security Act." But what is wrong with that? If the proposed legislation is superior to the present legislation, why retain the present legislation? To lament that all the preparations in the Internal Security Act will not have a chance to operate is like insisting that we should not use a bulldozer to clean up the debris in a given area because the shovel wielders have already planned on how to remove the tin cans and stones.

It is like saying that we should not use a hose on the garden because we have made arrangements to carry the water in buckets, or, to use a more drastic illustration and one in keeping with the seriousness of the situation of today, it is like saying that we should not use the atom bomb because conventional artillery can methodically knock down one by one the houses in a targeted town. Why use the Internal Security Act, with all its laborious, snail-moving registrations, when the machinery of H. R. 8912 can with one fell swoop do everything, and far more than that expected of the Internal Security Act.

Mr. Brownell says that outlawing the Communist Party will do nothing "in lieu of the act it vitiates, for failure to register under the Internal Security Act carries with it stiff penalties." In this statement the Attorney General equates failure to register under the internal security with making membership in the Communist Party a crime.

But that is not the pertinent comparison. The comparison is to be made between the Communist who registers under the Internal Security Act and the Communist who becomes a criminal simply by means of the passage of H. R. 8912. Under the registration required by the Internal Security Act the Communist has nothing to lose—and we have nothing to gain. We already know he is a Communist. The FBI has the list of 25,000 members of the Communist Party in the United States.

Requiring voluntary registration of the members does not add to the knowledge of the FBI in this respect. However, in spite of the fact that the FBI has the list of the 25,000 members, the Communist menace is still a reality. In fact, J. Edgar Hoover has declared that the Communist Party (especially through membership in expelled labor unions) and that is this famous organization that Mr. Nixon represents, UE, one of them, poses a "major and dangerous threat to our national security."

Under H. R. 8912 the situation completely changes. With the passage of that bill, every Communist, without any registering, immediately becomes liable to prosecution, conviction, and imprisonment. That is the difference between the provisions of the Internal Security Act and the provisions of H. R. 8912.

I do not question at all, nor appreciate any less than Mr. Brownell, the beneficial results attained through the working of the Smith Act. I only say that with the Smith Act we are using a rifle when a machinegun is needed; we are using artillery when an atom bomb is required.

The threat to the American people is here; it cannot be minimized by any fine-spun theories; it cannot be cloaked by argument. When the first team of the Communist Party was prosecuted and convicted under the Smith Act, the second team went into operation. We have now convicted the second team, and the third team is in the field. The Communist Party still has headquarters, it still publishes the Daily Worker, it still carries on as a legal organization.

There is something utterly grotesque about proceeding against a known enemy inch by inch when one blow would finish it off completely. H. R. 8912 would be the atomic obliteration of the Communist Party of the United States.

Mr. GRAHAM. May I interrupt you for a moment, please? In your opinion, if we would accept your proposition and adopt this bill, would that cure the present effect——

Mr. MUSMANNO. Yes, that is true.

Mr. WALTER. Why don't we just amend the second section of the Smith Act? Isn't that the solution?

Mr. MUSMANNO. There is only this difficulty, Congressman Walter: If you proceed merely by an amendment and do not indicate what are the features of evidence which would be used to establish membership, all a member of the Communist Party needs to do is say, "I resign," and then you couldn't prosecute him because you must have some standards of evidence.

Mr. WALTER. I dislike to disagree with the distinguished jurist of the supreme court of my State, but you are just as wrong as you could be. When a man is indicted for being a member of the Communist Party on June 1, if he resigns the day it is filed, of course, he is guilty.

Mr. MUSMANNO. Let us suppose, Congressman Walter, that this bill goes into effect August 1 of any particular year, and is known 30 days before the bill goes into effect that it is going into effect. And on June 30, the Communist resigns. He is arrested. He says, "Why, I am not a member." What happens?

Mr. WALTER. He would be indicted for being a member some other day.

Mr. GRAHAM. Proceed, Mr. Justice. I am sorry I threw you off your stride, but I did want to get that point.

Mr. MUSMANNO. The Attorney General says that under the Smith Act "we hope to cripple the domestic leadership of the Communist Party and thereby destroy a large part of its effectiveness." It is not enough to destroy "a large part" of its effectiveness. It must be destroyed completely; it must be annihilated as the Japanese Navy was annihilated, as Hitler's armies were destroyed.

To say that we must only cripple the enemy would be like saying in an American offensive against an enemy army of 1 million men that it would be enough to pick off the generals only. The army would still remain an army and would still be effective because colonels would become generals, majors become colonels, and captains become majors, while the first-string generals were being picked off.

The Attorney General assumes that section 2 (a) (3) of the Smith Act suffices to meet the needs of the country for security, and that is what Congressman Walter refers to.

But it is not enough. Under the Smith Act, the Government is required to prove in detail that the objective of the Communist Party is to overthrow the Government of the United States by force and violence. Months of trial are thus devoted to prove what everyone knows to be fact.

The first Smith Act prosecution in the New York case cost the Government over $1 million and it took 9 months to try. In all the Smith Act prosecutions throughout the United States, months are devoted to proving what is meant by the Communist Manifesto, Lenin's State and Revolution, Stalin's Problems of Leninism, and scores of other books, even though Congress has already stated that the Communist Party of the United States is part of the international Communist conspiracy and has but one purpose, namely the overthrow of our Government by force and violence.

Under the Smith Act is must be proved that the defendant personally advocated the necessity of overthrowing our Government by force and violence.

Mr. WALTER. That is not correct testimony. "Or becomes or is a member of."

Mr. MUSMANNO. I have not analyzed the entire Smith bill. I agree with you that if he is a member of an organization that conspires to advocate the necessity of overthrowing the Government of the United States, he can be convicted. But you must establish that the Communist Party is conspiring to overthrow the Government of the United States. It takes, let us say, 6, 7, 8, 9 months to establish that and it is entirely unnecessary. That is the point I am making, Congressman Walter.

Mr. WALTER. Of course 5 minutes after a bill similar to the one you are discussing would be enacted into law, the name would be changed from the Communist Party to something else.

Mr. MUSMANNO. The bill provides that the Communist Party or any organization by any name——

Mr. CELLER. Why will you have to go through the cumbersome procedure again of proving that the Communist Party was a foreign-dominated clique and that it was criminal in a sense——

Mr. MUSMANNO. Congressman Celler, they are doing that in Philadelphia right now. The trial has been on for months.

Mr. CELLER. Just a minute, Judge. Let me finish my question. You have court decisions which would indicate that the Communist Party is such. You wouldn't have to prove it again.

Mr. MUSMANNO. But they do have to prove it right now under the Smith Act. That is the failing in the Smith Act, Congressman Celler. That is the whole point, the whole crux. Isn't that true? In Philadelphia right now they are prosecuting Communists under the Smith Act and the trial has been on for 3 months. Under the Dies bill, that trial would have been over 2 months ago.

Under the Dies bill it is only necessary to show that he is a member of the conspiracy to overthrow our Government, and that participation in the conspiracy is demonstrated by proving that he is a member of the Communist Party.

It is not true, as the Attorney General maintains, that the legislation outlawing the Communist Party would be surplusage. H. R. 8912 would take the place of the Smith Act, insofar as it refers to the Communist conspiracy and drastically reduces the time of a Communist trial. Membership in the Communist Party would be proved like any other fact, and once that membership was established the crime would be complete because under the Dies bill, Congress declares the Communist Party to be a criminal organization, which it has not done so far, not under the Smith Act.

The Attorney General says that the immigration and naturalization laws are of obvious importance. We do not deny this. H. R. 8912 would not in any way interfere with those laws. Declaring Communists to be criminals would strengthen rather than weaken the immigration and naturalization laws, because this would simplify the matter of stopping the entry of Communists into the United States and of deporting those already here.

Mr. HYDE. Mr. Chairman, may I interrupt for a question there?

Mr. GRAHAM. Mr. Hyde.

Mr. HYDE. Do you think by declaring the Communist Party to be a criminal organization we would be violating the Constitution with respect to the prohibition against bills of attainder?

Mr. MUSMANNO. Heavens, no. The bill of attainder——

Mr. HYDE. It would not be making the organization or persons criminal without a trial?

Mr. MUSMANNO. There is a trial, a trial, court review——

Mr. HYDE. A trial with respect to membership, not with respect to the intent and purpose of the organization.

Mr. MUSMANNO. Congressman Hyde, being a member of a conspiracy is a crime in itself. The United States Code provides for that, a criminal conspiracy. You have the laws against monopoly of trade, interstate trade. You have a number of laws——

Mr. WALTER. Stop right there. Of course it makes it a conspiracy. But in establishing the crime it is necessary to prove all the essential ingredients of a crime.

Mr. MUSMANNO. Yes, and you do that——

Mr. WALTER. You don't charge a conspiracy and then say the crime of stealing United States bonds has been committed, and just make that bare allegation. You must prove the overt act.

Mr. MUSMANNO. Yes, and the overt act is being a member of a criminal conspiracy which Congress declares to be a conspiracy, and I will quote to you in just 5 minutes from the Supreme Court of the United States, Congressman Walter——

Mr. WALTER. That is all right. They make mistakes just as well as you do.

Mr. MUSMANNO. I know, but they have the last word.

Mr. WALTER. But as I read this, I am not a great legal light, I have been exposed to a legal education, but as I read this, it would be absolutely essential in every case, to prove just exactly what it is necessary to prove today, namely, that communism is a revolutionary conspiracy.

Mr. MUSMANNO. Congressman Walter, just as you stated to me a little while ago, you couldn't be more wrong than that statement which you made just now. Let me quote to you from the Supreme Court of the United States.

Mr. WALTER. What case?

Mr. MUSMANNO. *Communications Association* v. *Douds*—a monumental decision.

Mr. WALTER. That is an insurance case, isn't it?

Mr. MUSMANNO. Oh, no; that is the Taft-Hartley Act.

Mr. WALTER. I understand that, but that is not a criminal case.

Mr. MUSMANNO. It is a criminal case.

Mr. WALTER. This case you refer to?

Mr. MUSMANNO. Certainly. Let me read to you from the Supreme Court of the United States. Listen to this. It is directly in point. It couldn't be more accurate.

> There is certainly sufficient evidence that all members owe allegiance to every detail of the Communist Party program and have assumed a duty actively to help execute it, so that Congress could, on familiar conspiracy principles, charge each member with responsibility for the goals and means of the party. Such then is the background which Congress could reasonably find as a basis for exerting its constitutional powers, and which the judiciary cannot disregard in testing them.

I think that is the complete answer.

Mr. WALTER. I don't agree with you at all. I don't see how the Congress of the United States can say just arbitrarily that this organi-

zation is criminal. I think it is necessary to establish that, because that is a fact, or is not a fact. As in all criminal cases, every one of the essential elements of the crime must be made out because after all, there is this presumption of innocence. It is only overcome by the well-known rules.

Mr. MUSMANNO. Congressman Walter, every session you pass hundreds of laws doing that very thing. Something is just as innocent and as pure as snow today. Tomorrow it is a crime. You gave an illustration here this morning in speaking to Mr. Nixon, that if you drive your car out of this park at 40 miles an hour, that is a crime. Before Congress passed the law that made that a crime, it was absolutely innocent to do so.

Mr. HYDE. Will the gentleman yield?

Mr. WALTER. Yes.

Mr. HYDE. But under the bill about which you are now testifying, you would have to show that a person knowingly——

Mr MUSMANNO. Yes.

Mr. HYDE. If you have got to prove that, aren't you right back under the Smith Act again?

Mr. MUSMANNO. No; you are not, because once you establish that a man is a member of the Communist Party, then you have established the crime.

Mr. HYDE. No. The act says he has got to be a member knowingly.

Mr. MUSMANNO. I say you have established the crime. I haven't said yet you have established his participation. Then you establish his participation as you prove any other crime, as you prove any other conspiracy. Witnesses who saw him attend meetings, who saw him pay dues, who became a courier, who helped steal a secret. Then he certainly knows what he is doing.

This will come to your point.

The Attorney General says that "those who are sufficiently close to the conspiracy to have firsthand knowledge of it are rarely willing witnesses," but frequently they are "directly questioned as to their knowledge." He states that the enactment of a law making Communist Party membership criminal per se "might prove a basis for applying the privilege against self-incrimination in cases where it does not now apply, and thus further complicate prosecutions under these laws."

This statement by Mr. Brownell is entirely invalid. A person is or is not a Communist. Under H. R. 8912, if he is a Communist, he will invoke the fifth amendment. Under present laws, if he is a Communist, he will still invoke the fifth amendment. Where is the difference? Naturally, if he is not a Communist (and the question put to him involves the Communist Party) he has no right to use the fifth amendment under existing laws or under the proposed H. R. 8912, and therefore can be compelled to answer.

Mr. Brownell complains that under legislation outlawing the Communist Party, the Communist Party would be declared illegal by legislative finding but that under the Smith Act the court must determine whether the person involved is engaged in illegal activities. It is because there is no necessity for long, extended trials to prove what is already an established fact that we need legislation like that embodied in H. R. 8912. The passage of this bill would not foreclose court review, as Mr. Brownell suggests. This legislation would sim-

ply mean that it forecloses the necessity of spending 5 months to prove what can be proved in an hour.

Mr. Brownell fears that declaring Communist Party membership a crime would be a legislative fiat. But the passage of such a law would not be any more a fiat than the passage of any other law. The enactment of any criminal statute is in the nature of a fiat; it is bound to work a change in the perspective of every citizen because it makes criminal what the moment before the enactment of the law was entirely legal.

The only question Congress needs to be concerned with is whether the proposed legislation comes within the jurisdiction conferred upon it by the Constitution of the United States as interpreted by the Supreme Court of the United States. And I do not see how anyone can question that the Supreme Court conclusively settled that precise question in the monumental case of *Dennis* v. *United States* (341 U. S. 494, 501), where the late Chief Justice Vinson said:

> We reject any principle of governmental helplessness in the fact of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence.

What Mr. Brownell overlooks in his entire argument is that membership in the Communist Party is membership in a criminal conspiracy, to which, of course, no one has the legal right to belong. Mr. Justice Jackson, in his concurring opinion in the same Dennis case, made the point very clear when he said:

> The Constitution does not make conspiracy a civil right.

Further that—

> no reason appears for applying it—the law of criminal conspiracy—only to concerted action claimed to disturb interstate commerce and withholding it from those claimed to undermine our whole Government.

Mr. Brownell complains that outlawing the Communist Party would mean that "membership in the Communist Party per se is a violation of the statute even without any showing of personal knowledge of its aims or purposes." To say that anyone could be a member of the Communist Party and not know its aims or purposes is to say that one could join a gang of kidnapers and not know that the object of kidnapers is to abduct victims and hold them for ransom, or to join a gang of counterfeiters and not know that the purpose of the organization is to make and circulate false money.

Considering the universal dissemination of news today, which, through newspapers, radio, and television enters into every home like the balmy air of summer, I doubt that there is anyone with the intelligence of a 10-year-old who can honestly say that he does not know the purpose of the Communist Party. However, so far as H. R. 8912 is concerned, Mr Brownell's observation in this regard is purely academic because section 3 specifically states that the penalties provided in this bill apply only to those who are members of the Communist Party, "knowing the revolutionary object or purpose thereof."

The case of *Wieman et al.* v. *Updegraff et al.* (344 U. S. 183), cited by Mr. Brownell in this portion of his statement has no possible application to the situation outlined in H. R. 8912. Mr. Brownell's reference to the Dennis case in this connection strengthens rather than weakens the constitutionality, the wisdom, and the necessity for the

enactment of H. R. 8912, and that is the Bible insofar as the law is concerned, the latest expression of the Supreme Court of the United States.

Mr. CELLER. Judge, will you pardon an interruption there?

Mr. MUSMANNO. Certainly, Congressman.

Mr. CELLER. In the light and conditions concerning political parties, do you think that Congress merely by edict would say that the Communist Party is criminal and therefore should be subject to sanction? Is your answer in the affirmative in that regard?

Mr. MUSMANNO. It is in the affirmative, but you said political party. The Congress could not make the Democratic Party an outlawed organization because that is certainly a political party, either one of those comes under the designation of constituted political party.

But we know that the Communist Party is not a political party. It is a criminal conspiracy. The stones in the streets know that. Every tree in the park knows that.

Mr. CELLER. Don't get so intense, Judge.

Mr. MUSMANNO. That is it. We haven't been intense in all these years. We are treating it very academically. It is a very nice theory, but we are confronted with a problem, a menace, a scourge, a threat that this country has never had before in its entire history.

Mr. CELLER. We cannot act as though we are just affecting our adrenal glands. We have to act with reason, not emotion.

Mr. MUSMANNO. Emotion is based on reason when it is effective.

Mr. CELLER. I said before in my question to you, according to our tradition and history, I remember distinctly that the Socialist Party was considered very much like the Communist Party is today. That is, the Socialist Party was thus considered directly after the First World War. We ousted from the Congress Victor Berger, who was a duly elected Member of the House from the State of Wisconsin.

In the State of New York they ousted, I think it was, six members of the Socialist Party from the lower house of the State legislature. In those days we heard the same horrendous accusations against the Socialist Party.

Mr. MUSMANNO. Not to this extent.

Mr. CELLER. I beg to differ with you. I remember it very well. I recently checked on those observations of many people in this country after the First World War. We never went to the extent of declaring then the Socialist Party by mere ipse dixit of Congress a criminal conspiracy, and therefore to be outlawed.

There is involved, is there not, the constitutional safeguard of free speech and the press and freedom of assembly and due process in a party? Isn't that true?

Mr. MUSMANNO. That is true. But when you use those vehicles to overthrow the Government, you step outside the Constitution.

Mr. GRAHAM. Don't you come back to Justice Holmes' definition of "Cry fire in a theater and start a panic"?

Mr. MUSMANNO. Entirely so, Chairman Graham.

Mr. CELLER. That is the point. If the cry of fire is not made, you have to prove that. That is what the Smith Act does. The Smith Act says, "All right, you are a Communist," but there is something more to be proven than mere membership in the Communist Party. You have to teach, you have to advocate, and that is in the nature of what Judge Holmes speaks of the so-called overt acts.

Mr. MUSMANNO. You perhaps helped to pass the law that says possession of any die, of any piece of metal which can be used for the counterfeiting of the United States currency is a crime. It is provided anyone in Indian territory who has in his possession intoxicating liquor, that is in itself a crime. There are some things which we recognize as being so wrong and so deleterious and so detrimental to the welfare of the country that we say that is a crime. And we certainly have proved that being a member of the Communist Party can only be injurious to the United States of America.

Mr. CELLER. I think there is a different criterion when we go into the realm of ideas and views rather than physical possession of an object.

Mr. MUSMANNO. I see no difference. You call it an idea.

Mr. CELLER. I didn't say ideal. I said ideas.

Mr. MUSMANNO. I said ideas. You call it an idea to say let's destroy the capital of the United States. That is an idea. Well, let's go kill someone, is an idea. Everything at sometime or other is formed in the cerebral interstices of the skull and it was an idea. But it becomes then an act, an overt act.

Mr. CELLER. I may have an idea to kill somebody, but it is only an idea, not a crime.

Mr. MUSMANNO. If a Communist merely retains that within his cerebellum and the medula oblongata, no one will punish him, no one will be concerned with him. But as soon as he meets with someone else and says "What did the Kremlin do yesterday?" and "How shall we effectuate that policy in the United States," then he has gotten beyond the realm of ideas. He has gotten into the empire of facts, and that is when we have the right to protect ourselves.

I was about to quote from Justice Jackson again in the Dennis case. You cannot approach any of this proposed legislation without having the Dennis case before you. He said:

> The basic rationale of the law of conspiracy is that a conspiracy may be an evil in itself, independently of any other evil it seeks to accomplish. Thus, we recently held in *Pinkerton* v. *U. S.* (328 U. S. 640, 643–644), "It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinctive offenses. The power of Congress to separate the two and to affix to each a different penalty is well established. * * * And the plea of double jeopardy is no defense to a conviction for both offenses" (341 U. S. 494, 573).

Further:

> The reasons underlying the doctrine that conspiracy may be a substantive evil in itself, apart from any evil it may threaten, attempt, or accomplish, are peculiarly appropriate to conspiratorial communism (p. 573).

It may be well also to look at the decision of the Supreme Court of the United States in the case of *Adler* v. *Board of Education* (342 U. S. 485), where the Court, through Justice Minton, said:

> Membership in a listed organization found to be within the statute and known by the member to be within the statute is a legislative finding that the member by his membership supports the thing the organization stands for, namely, the overthrow of government by unlawful means. We cannot say that such finding is contrary to fact or that "generality of experience" points to a different conclusion (pp. 494–495).

Mr. Brownell says that—

> it would undoubtedly be argued that the first amendment would be affected by such a law.

There is no doubt whatsoever that Communists will so argue. That is the argument they use in every case where the United States Government is seeking to protect this Nation from their traitorous activities. This argument was specifically advanced in the Douds case, supra, and the Supreme Court specifically rejected in the following language, Chief Justice Vinson speaking:

> Although the first amendment provides that Congress shall make no law abridging the freedom of speech, press, or assembly, it has long been established that those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself against unlawful conduct and, under some circumstances, against incitement to commit unlawful acts. Freedom of speech thus does not comprehend the right to speak on any subject at any time (p. 394).

Mr. Brownell states that—

> the sum of the constitutional doubts as to such proposals suggests at least that several years might be required before final ruling could be anticipated.

I think that Mr. Brownell is unduly pessimistic in this respect but even if several years were to pass, it is far better in the long run to have proper legislation than to hobble along with improper legislation. It might be noted in this connection that the great delay in a decision on the Internal Security Act is due to the fact that after the Subversive Activities Control Board was appointed, at least 15 months was consumed in the taking of testimony by that Board, and further time elapsed on top of that before the act got into the courts for interpretation.

A decision on H. R. 8912 would be comparatively rapid because any trial under its provisions would be short and, given the importance of the litigation, the appeal would undoubtedly be accelerated. At any rate, all present legislation on the subject would remain in effect until the final decision of the Supreme Court on the proposed legislation.

Mr. Brownell then offers a strang objection for an Attorney General charged with enforcing the law when he says that to prosecute 25,000 members of the Communist Party would be a "tremendous task." When has duly constituted Government hesitated to prosecute crime because of the burdens attendant upon such prosecution? To object to taking up burdens involving the very security of our Nation is not the American way of approaching any problem. With that kind of reasoning the Federal forces should not have sought to preserve the Union in 1861 because of the numerousness of Confederate spies. Suppose it is a "tremendous task." It is no more tremendous than fighting a war; it is no more tremendous than fighting murderers, counterfeiters, and kidnapers.

Furthermore, the job is not so tremendous as the Attorney General apprehends. Not having to prove the purpose and objective of the Communist Party—which is what makes the Smith trials so long—trials under the new legislation would be comparatively short. Moreover, it will not be 25,000 who will be prosecuted. Immediately after the enactment of H. R. 8912, nothing can be more certain than the fact that thousands of Communists will leave the party like rats deserting a sinking ship.

When Mr. Brownell speaks of difficulty of proof, he in effect speaks the language of defeatism. The proof of the criminality of Communists has never been lacking. It has been the reluctance on the part

of officialdom to acknowledge the grim reality of what the Communist Party means that has done so much damage to the United States.

One who is averse to carrying out any particular policy can conjure up all kinds of captious objections. Thus, Mr. Brownell complains that party membership could in many cases only be "established through the oral testimony of the confidential informants, people whose value for such purposes would be thereafter completely destroyed."

But before their value would be supposedly destroyed they would have supplied information for convicting many Communists. If the FBI now knows of 25,000 members of the Communist Party, the present informants can establish the membership of a large portion of that 25,000—or practically all of those who remain in the party after the enactment of H. R. 8912.

Furthermore, no big offensive ceases because there may be casualties. If these informants become valueless there will be other informants to take up the fight. According to Mr. Brownell's arguments, no informants should be used even in prosecuting under the Smith Act because their value would thereafter be completely destroyed. This is not argument; it is simply obstructionism. The United States does not lack in personnel willing to take up any task involving the security of our country and the preservation of its institutions.

Nor is it correct, as Mr. Brownell says, that under legislation outlawing the Communist Party the same evidence would be required as is now used in prosecutions under the Smith Act. As already stated a number of times, under the Dies bill the objective and purposes of the Communist Party would not need to be proved in court.

As a final criticism, the Attorney General's statement says that legislation outlawing the Communist Party "would force the Communist movement underground, cause it to close its headquarters, terminate its publications," and this "would at the same time and to the same extent increase the already difficult investigatory job of the FBI." This complaint would suggest that the Communist Party is maintaining its headquarters and publishing the Daily Worker as a convenience to the FBI.

The Communist headquarters and publications continue to exist because these facilities are of vast aid to the Communists in the carrying out of their objectives, which is to overthrow the Government of the United States by force and violence. The Daily Worker informs all the party faithfuls of the party line as it comes from Moscow. It is not a newspaper; it is a battle directive.

The Communist headquarters supply meeting places for the conspirators, who, with telephone, telegraph, and courier services at their command, despite the surveillance of the FBI, still carry out the work of the revolution. If the maintenance of the headquarters and the publication of Communist newspapers really helped the FBI and hurt the Communist Party, it needs no Einstein to reason that the Communists would give up the headquarters and the newspapers in a hurry.

To argue that the Communist Party should be allowed to maintain its headquarters so that we may know what it is doing is like saying that arsonists should be required to keep their gasoline in full view so that we can tell just how much incendiary material they have on hand. The best way to meet that criminal threat would be not to tolerate the

arsonists but to destroy their incendiary deposits and arrest the arsonists.

Although the argument that outlawing the Communist Party will drive the Communists underground is an argument that has been blanched white in the sunlight of reason, it still raises its pallid head to speak its anemic lines. It assumes that Communists plan their revolutions in the Capitol Esplanade of Washington, in the Rockefeller Plaza in New York, and on the lake front in Chicago. The Communist Party has always been underground in the sense that it has always been spying on us, plotting against us, and undermining the institutions which make us free.

Vladimir Lenin, founder and leader of the Bolshevik Revolutionary Party in Russia, prepared decades ago detailed plans for the underground activities of the Communist Party. William Z. Foster, national chairman of the Communist Party of the United States, is the architect who has designed the detailed blueprint of the Communist underground structure in the United States.

I hold here in my hand the latest brief filed by the United States Government in the case of *United States* v. *Elizabeth Gurley Flynn* in the United States Court of Appeals, Second Circuit. This brief was undoubtedly prepared under the supervision of the Department of Justice. Nine pages of this brief are devoted to a detailed discussion of the Communist underground, not as a possibility but as an actuality of today. J. Edgar Hoover, Director of the FBI, has spoken at length of the Communist underground of today. To speak of the Communist underground as a hypothetical contingency of the future is simply to ignore the ground under one's feet.

It has always been said of the Communist Party, by those who know, that its party structure is like an iceberg—one-eighth above the surface and seven-eighths beneath the surface. And I may add that the above-surface portion may be compared to a periscope through which the torpedoing plotters below observe the target and plan how to destroy it. To oppose outlawing the Communist Party is to oppose destroying the periscope.

Under the heading of Loopholes in Our Laws, Mr. Brownell recommends that the Internal Security Act be broadened to require the registration of labor unions and businesses which are "under the domination of Communists and are in a position to damage our national security." Specifically he has proposed legislation entitled the "Communist-Infiltrated Organizations Act." This measure would require the Subversives Control Board to conduct hearings to determine if certain labor organizations have been infiltrated by Communists. If it found such infiltration, employers would not be required to deal with the union for collective-bargaining purposes, and employers would not be considered as engaging in unfair labor practices if they refused to hire or to dismiss employees who attempted to compel recognition of the union for collective-bargaining purposes. In addition to the possibility that such an act, unless enforced under regulations carefully drawn, might be misused to harm legitimate members of legitimate labor unions, there is another criticism well articulated in an editorial by the New York Times on May 13, 1954, as follows:

> Communist-controlled unions may still continue to exist, because while employers are not required by law to bargain with them they may do so. Em-

ployers who are economically strong will certainly refuse to bargain and will successfully fend off strikes to compel recognition. But small, economically weak employers may be unable to withstand such concerted action. Their capitulation would, obviously, not be a matter of choice but of necessity. These small, handicapped employers would, in a sense, bear the brunt of enforcing the statute.

Under H. R. 8912, Communists controlling any labor union would be arrested, convicted, and sent to prison for 10 years. If those who took the places of the convicted Communists themselves became Communists, they would be prosecuted and sent to prison for 10 years. I am certain that after 2 or 3 convictions of this character the first Communist that stepped into that union would be driven out by the union membership without intervention by the Government. It is certainly desirable that a procedure be established whereby unions and businesses tainted with Communists be officially investigated so that the offending persons may be identified and prosecuted, but we must never lose sight of the fact that the vital thing is to prosecute those engaged in plotting against the security of the Nation.

The Attorney General has presented another bill which is called the "Defense Protection Act of 1954." This measure would bar subversives from privately owned facilities engaged in supplying power or basic materials to defense contractors. Here again great care needs to be exercised so that legitimate and loyal enterprises may not be harassed and damaged. Under a broad interpretation of this measure it could be argued, as was pointed out in the New York Times of May 15, 1954, that—

a newspaper, or a radio station, or a motion picture could be said under the defense protection bill to be "in a position to affect security."

As I have indicated, while investigatory powers must be lodged in a suitable investigating body the vital thing is to track down, ferret out, and prosecute Communists. Communism is not a vague, invisible force. It is a program of conspiracy against the security of the Nation. The conspirators must be isolated and immured.

I applaud the Attorney General's determination to strengthen the laws against sabotage, espionage, harboring of fugitives, and perjury, but I must point out that the passage of legislation outlawing the Communist Party would in many instances make legislation suggested by the Attorney General unnecessary. Again we would have the situation of pitting an artillery shell against the atom bomb.

Under the heading "Immunity Legislation," Mr. Brownell says:

The bulk of the Communist adherents is now under orders to place themselves in readiness in positions where, at the propitious moment, they will be available to carry out the dirty business of sabotage, espionage, and subversion, to disrupt internally our citadel of defense.

But how would the Attorney General meet that situation? By registering the saboteurs, spies, and subversives? Mr. Brownell adds:

Therefore, it is essential that we secure the means of informing ourselves in advance of where these conspirators will seek to act, and to forestall them before their damage is irreparably done.

I know of no better way of forestalling the threatened irreparable damage of these conspirators than by taking them into custody as the criminals they are and putting them behind iron bars and stone walls.

What we are seeking to do is to stamp out the Communist criminal conspiracy to destroy our Government, and the most direct way to achieve that end is to declare all Communist organizations illegal and to imprison all Communists. With all that has been said against outlawing the Communist Party, no one has yet come up with a rational argument as to why we should not completely isolate the enemy that is trying to destroy us. We fought the Communist in Korea to keep him from hurting us here. This enemy is so powerful, his evil influence so far-reaching that it has even been recommended we should fight him in the jungles of Indochina so that the tenacles of his conspiratorial malevolence may not crush out our freedoms here in America. And yet, here in the United States, where we actually see him and know him for what he is, we decide to fight him by writing his name in a registration book.

If all this were written up as a story in Ruritania we could smile at its fictional absurdity, but it is happening here in the most enlightened republic of history. Incidentally, what will the historians of the future say of these strange happenings?

The rationale which sees virtue in the noncriminal registration of Communists can only be supported in metaphysics, certainly not in logic or governmental science. If, according to the Attorney General, the Communist Party is a perfectly legal organization and not to be molested, then why should its members be required to register, apart from registrations which apply to all citizens equally? There are literally hundreds of legislative measures, some on the statute books, some in the legislative machinery, and some to be proposed, as to what Communists may and may not do. In this forest of legislative propositions there are some that deny Communists certain employment, certain residences, certain transportation, certain contractual rights; they are to be limited and restricted in printing, mailing, and writing privileges; they may not enter certain areas; they may not enter into certain associations, and so forth.

But if a Communist is an American citizen and the Attorney General of the United States says there is nothing wrong about his being a member of the Communist Party, what right does his Department have to deny him employment? If, according to the Department of Justice, the Communist is not a criminal, then by what right may he be restricted, or silenced, or denied the right to work where he pleases?

Can anything be more inconsistent, more absurd, more un-American than telling a man he has the right to join a certain organization, but if he does he may not choose his calling or trade, he may not select his residence, he may not name his associates, and so forth? We do not have under our Constitution any such status as partial citizenship. A person cannot be a citizen for certain matters and a noncitizen for other matters. The legislation endorsed and recommended by Mr. Brownell makes a Communist a constitutional hippogriff, for which there is no provision in the American scheme of government.

There is something quite unsatisfactory and even humiliating about the current approach to the Communist menace in America. It reveals an irresolution, a spirit of timidity and appeasement that is not in consonance with the American character that confront problems directly and face to face. Compromising with an evil can only augment and compound the inevitable disaster consequent upon such un-

valorous conciliation. The compromise with the pre-Civil War slavery question had eventually to be wiped away in blood. The compromise at Munich became fuel for the most catastrophic conflagration in history.

There is no compromise with communism. It cannot be approached diagonally. There is only one thing that Communists recognize and that is a firm position reinforced with power to sustain it. There are not enough leaves in the forests to match in quantity the number of times it has been asserted that Communists are determined to destroy the American way of life. Why, then, conciliate with the evildoers?

In view of all these things, Mr. Brownell's recommendations can only be taken with a great deal of reserve. In fact, I think that we can almost conclude that Mr. Brownell does not mean what he said here or that he has not weighed the significance of what he recommended before your committee. In substantiation of this observation it is only necessary to look at the speech he delivered on April 9, only 3 days before his appearance here. On April 9, speaking to the entire United States over television and radio networks he said:

> The threat of communism is a very real one. Communists are scheming, practical, and devious men and women dedicated to the destruction of our Government and our way of life.

Listen to that sentence:

> Communists are scheming, practical, and devious men and women dedicated to the destruction of our Government and our way of life.

No modification, no limitation: They are dedicated not to merely disturbing but to destroying our Government and our way of life.

Then, only 3 days later he says that Communists should be given a legal status, should be allowed to have headquarters and every facility that our great country affords in the way of telegraph, telephone, courier, printing, and messenger services—to do what? To carry on for the destruction of our Government and our way of life. Does it make sense?

Which of the two propositions are we to accept? The one presented by Mr. Brownell on April 9 or April 12? I prefer to believe that he was speaking from his heart when he addressed the Nation on April 9. Speaking directly to the American people via television, he was speaking as an American patriot. Here he was speaking as an administrator who was reluctant to see the dismantling of an elaborate machine even though some deep reflection and deliberation would easily convince him that all this machinery is not only unnecessary but actually ruinous of the cause he is defending.

On April 9 he referred to the 25,000 Communists in the United States as potential foreign agents. Yet, according to his statement before this committee, he would legalize them. Could anything be more inconsistent?

There are those who speak of 25,000 Communists in the United States as a small number, but 25,000 Communists means 25,000 foreign agents, 25,000 spies. Twenty-five thousand spies in the United States means one for every 6,000 people. We have only one FBI agent for every 26,000 Americans. Furthermore, it must be noted that each one of these 25,000 spies must have at least 5 people who, through relationship, persuasion, friendship or sheer perversion, will do the spy's

bidding, so that, instead of 25,000 Soviet agents, you have a potential 125,000 saboteurs. One Communist in the wrong place is a menace to national security. It takes only one man to blow up a bridge, only one auger to sink a ship, only one monkey wrench to wreck a machine, only one bucket of sand to ruin a dynamo, only one Alger Hiss in striped pants to betray America into the hands of her enemies.

I believe that Mr. Brownell's statement before this committee, which statement, of course was given news coverage throughout the United States, has done and will continue to do the country a great deal of damage because it will give encouragement to the Communist Party and will bring them recruits. A Mrs. Margaret A. Flanagan of East Santa Cruz, Calif., wrote me shortly after I appeared here, saying that—

> outlawing the party in California would have a most salutary effect because "they" love to tell you that the party is legal in California—therefore their activities are legal.

Mr. Brownell's self-contradictory position on this subject of outlawing the Communist Party is reflected in the statement of William J. Jameson, of Billings, Mont., president of the American Bar Association, that:

> We must recognize and protect the constitutional rights of all, including Communists, but at the same time we must not be blinded to the fact that if the Communist philosophy should prevail, these constitutional rights would be forever lost.

Using Mr. Jameson's thought and paraphrasing the language we could say: "The Communist is entitled to use firearms but of course he may kill us." The fundamental error in Mr. Jameson's proposition is that he starts off with a wrong premise. He says that we must protect the constitutional rights of the Communists. But the constitutional rights of a Communist do not entitle him to betray the Government which assures him those constitutional rights. The constitutional rights of a man who kills his neighbor in cold blood is to have a trial, in accordance with the guarantees in the Constitution.

It would be absurd to say that the Constitution gives this killer the right to remain at large and continue shooting. The member of a gang of robbers is entitled to constitutional rights. Those rights include trial by jury, defense counsel, witnesses in his behalf and opportunity to confront accusing witness. The Constitution does not give him the right to have headquarters, publish a newspaper, and continue to rob.

Every person in the United States has rights under our Constitution, but the Constitution does not give anyone the right to be a Communist any more than it gives him the right to be a murderer.

I do not know how members of this distinguished committee may react to this entire incredulous situation but I am frank to say that, in my opinion, there is something almost immoral about living in the same constitutional house with an organization that is wedded to a foreign government, devoted to a foreign ideology and loyal to a foreign conspiracy, whose object and plan it is to murder us in our beds, and take possession of our home for the purpose of turning it over to that foreign government, that foreign ideology and that foreign conspiracy.

We are using an appalling percentage of all our Government services on this one item of protecting the supposed rights of Communists.

Bureaus, boards, committees, bill drafters, research men are devoting nights and days to preparing legislation, plans, reviews, superreviews on the subjects of special treatment, special hearings, special consideration, delays, privileges, and prerogatives. And yet, what is the essential question of Communists in the United States? It is simply a question for the police and for the courts.

If all other types of criminality in the country were to get the attention accorded to Communists, we would have to have a special branch in the Department of Justice to protect the constitutional rights of kidnapers, a special bureau for the guarding of the rights of counterfeiters, counless investigating committees to see to it that all bandits are assured of fifth amendment privileges. I repeat, it is a matter for wonderment in the never-never land of fancy.

A few months ago on a visit to New York I happened to meet up with a group of young American soldiers who had just returned from Korea. They were touring the town and were, of course, greatly impressed with all the wonders that Manhattan has to offer. But there was one thing which bewildered them. They saw in New York a Communist headquarters. These young men still bore physical and moral scars from battling Communists in Korea; some of their comrades had suffered horrible atrocities at the hands of Communist captors. The word "Communist" was a word for them to hate. Yet here back in their own home country they saw the word and the deed in Communist headquarters, in Communist newspapers and in Communist individuals, and it was all legal. These American soldier boys could not understand it. Neither can I.

If we had refused to recognize Communist Russia in 1933, or had denounced the recognition when it quickly became evident that it was being used only for our own undoing, the tragedy of the Korean war would never have come to pass. If we had outlawed the Communist Party any time between 1929, when it was first formed here, and 1939, Hitler and Stalin might never have precipitated World War II.

And I am satisfied that had we arrested every Communist after 1940 Russia would not today have the atom and the hydrogen bomb. Nothing, however, can be more useless than past regrets. At the same time, nothing can be more useful than using past mistakes for charting the future. The fact that Russia has the atom bomb and possibly also the hydrogen bomb need not dismay us. It may well be that there will be other inventions, inventions that may neutralize the hydrogen bomb. Certainly the scientific distance to be traveled from the hydrogen bomb to its antidote is not as great as that which had to be traversed in discovering the frightful magic of the hydrogen bomb itself.

I cannot believe that science which could with almost supernatural genius create the hydrogen bomb capable of wiping out an island in the sea cannot find the combination of chemical and mechanical ingredients that will destroy the plane carrying the bomb or one which will detect the presence of a hydrogen bomb far enough away to signal planes to intercept it. I believe that that is not only within the realm of possibility but practically within the range of expectancy.

And what is to be done with that secret once it is discovered? Are the Communists to be allowed to steal that also? We have seen how the Alger Hisses, the William Remingtons, the Harry Dexter Whites, the Judith Coplons, the Rosenbergs, the Harry Golds, and the other

unspeakable traitors stole atom-bomb formulas, Government documents, and national-security secrets. Are the Communists of today to be allowed to steal the new secrets which American genius under God's guidance may discover? Are we going to permit 25,000 spies to travel everywhere unmolestedly, untrammeledly, wearing the bulletproof vest of the United States Constitution, insulated against arrest by the Bill of Rights, and protected from prosecution by registration and legislative immunities?

Mr. Chairman, one great chance is left to us. To allow this gang of potential murderers, potential destroyers of civilization, and potential betrayers of the human race to steal that secret or any more secrets of American security is to commit an unpardonable crime against the founders of our beloved country, a crime against the Americans yet to be born, if, indeed—unless there is a direct, purposeful, and conclusive extirpation of the Communist conspiracy—there is to be a future America at all.

Every day some domestic turmoil or international disturbance makes American official position on the Communist Party all the more inconsistent, all the more indefensible, and all the more intolerable. There is not a true American patriot and lover of democracy that does not secretly yearn, if not openly hope, that the Red regime in Guatemala may fall. And there is no doubt that the people of the United States would enthusiastically applaud and cheer any action in Guatemala which would result in outlawing all Communists in Guatemala. We would cheer that courageous action on the Caribbean, but we lack the courage or the will to do it on the Potomac.

We are partly responsible for the sad plight of Guatemala and the melancholy days upon which she has fallen. For years Communist agents have been telling the Latin Americans that it is not true that the United States opposes communism. They point out: Is the Communist Party not legal in the United States? Does it not have headquarters in the large cities? Does it not openly publish newspapers and magazines? Do not its members have access to the galleries of the Capitol? Do representatives of the Red Pravda and Izvestia not have the right to enter all our Government departments?

Are Communists not allowed to be candidates for President, Senators, Representatives in Congress? Who knows how many thousands of honest but deluded Mexicans, Cubans, and other pan Americans have been recruited into the Communist Party because they have been told that it is proper, honorable, desirable, and even wise to join the Communist Party. "Look at the United States," they have been urged. "The Communists there are untouchable."

Although, concededly, there is some gringoism in Latin America, it must also be admitted that there has also been a profound respect for the United States. That respect has been not only an acknowledgment of the power and the wealth of the United States, but it has had its basic roots in an appreciation of the truly benevolent spirit that this country has manifested toward all its Pan American neighbors. But that respect is wavering. It can turn into doubt and even disrespect when it is seen that the United States occupies a position which is certainly inconsistent and which seems to be insincere, if not dishonest. The United States asks Guatelmala and all other Latin Americans to drive Communists from its shores, but here we give the Communist Party the protection and the respectability of a political party. We

say we know it is not a political party; we say we are aware it is a criminal conspiracy, but we don't act that way.

Never did the United States wear two faces. The time has come to tear away the mask of a misguided liberalism which, in the name of democracy, gives to Communists the very means and the weapon to destroy democracy and which, in the name of the Bill of Rights, invites the Communists to destroy the Bill of Rights. The time has come to throw away the distorted philosophy of appeasing the Red python coiled at our very doorstep. The time has come to speak as Americans and act as Americans. The time has come to call the Communists in America really to account.

The passage of H. R. 8912 will do more to clear the atmosphere as to what the United States means and thus immeasurably further the cause of peace than the landing of a million times more arms and ammunition than the Soviets landed at Puerto Barrios.

Mr. GRAHAM. In the interests of all concerned, we have just 30 minutes. Mr. Nixon was excused to accommodate you. May I suggest that you wind up your argument in 5 minutes and submit your brief. Then that will give us an opportunity to hear the others. We do not want to deprive any one of the right to be heard, but we are limited in our time. We have accommodated you because you came from Philadelphia.

Mr. MUSMANNO. From Pittsburgh. Might I ask this, Mr. Chairman. This matter is of such importance, and I certainly do not want to seem immodest in making this statement, but it may be that I could be of some assistance to the committee.

Mr. GRAHAM. You certainly have been.

Mr. MUSMANNO. I might be of some help in answering questions.

Mr. GRAHAM. It is perfectly apparent, Mr. Justice, that we cannot finish this hearing today. Can you return again on Friday?

Mr. MUSMANNO. I will be very happy to.

Mr. GRAHAM. May I make the suggestion, that at this point you rest and permit Mr. Nixon to come back. Are there any representatives of the American Federation of Labor or the CIO present? Do they desire to be heard? The Chair hears no answer.

Mr. WALTER. I understand they were going to submit briefs, Mr. Chairman.

Mr. CELLER. Were they notified of the hearing, Mr. Chairman?

Mr. BESTERMAN. They were, Mr. Chairman; and the American Federation of Labor promised to submit a written statement by Friday. We have not heard from the CIO.

Mr. CELLER. Did the CIO promise likewise?

Mr. BESTERMAN. Not yet.

Mr. GRAHAM. Go ahead, Mr. Nixon.

STATEMENT OF RUSS NIXON, WASHINGTON REPRESENTATIVE, UNITED ELECTRICAL WORKERS—Resumed

Mr. NIXON. Sir, I had gotten to the point in my prepared statement where I was summarizing the content of House Joint Resolution 528. I was just, I think, about to make the point that immediately upon the decision of the SACB agency, and prior to any appeal, the organizational death sentence is to be carried out by the prohibition of any individuals listed as proscribed.

Mr. WALTER. May I interrupt you at that point. I do not read it that way. You may be right. But you see, here is a proviso on page 8:

That no such order shall prohibit any individual from acting for such organization in proceedings before the Board

and so on. Does not the finality of that order depend on what actually happens in the court, assuming there is an application?

Mr. NIXON. Perhaps my language "from further relationship to the organization" is too extreme and covers more than it should. The language here is that once the SACB has reached an order, they can list individuals, that the SACB—

shall have authority to issue such order or orders as it may determine to be appropriate prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policymaking functions—

with the exception that you mention—which means, I assume, that they can have some relationship to the appeal process itself, but not to the functioning of the organization as an organization.

Mr. WALTER. I think that is where we disagree, because you see, the order is not final until after the order of the court, assuming there is an appeal.

Mr. NIXON. Sir, the language is certainly very clear. It says that before the orders are final, they issue a list of persons. They make a whole list of individuals—it could be 5 people, or 500, or 1,000, or 5,000—as it may determine to be appropriate, prohibiting any such individual or individuals from acting as "officers or representatives or exercising substantial administrative or policymaking functions."

That could apply to stewards, to grievance committee men, to local union officers, to international union officers. It has no limit whatsoever, sir.

Mr. HYDE. Will the gentleman yield?

Mr. WALTER. I was just going to make one suggestion, that we provide in the language that the appeal should act as a supersedeas. Do you not think that would take care of the whole situation? In other words, the whole structure would remain in status quo pending the disposal of the appeal.

Mr. NIXON. Of course, our position is one of complete opposition, but this would remove one detail of our opposition.

Mr. CELLER. You spoke of an international union. Does that mean that if the local union is determined to be Communist infiltrated, that a proscription could be placed upon the international union?

Mr. NIXON. I do not know, Congressman Celler. The language of proscription applies to the "organization and its component parts." Perhaps that works down and not up.

Mr. CELLER. Where is that language?

Mr. NIXON. Sir, that language is on page 7, line 23; also the language is in lines 12, 13, and 14 of page 7:

To effectuate the expeditious dissolution and liquidation of the affairs of such organization and its component parts.

I frankly do not know whether that would apply up to an international organization from a local or just down from an international to all locals.

Mr. HYDE. Will the gentleman yield?

Mr. GRAHAM. Go ahead.

Mr. HYDE. Mr. Nixon, I do not follow your contention that these people should be prevented—with the possible exception of the provision on page 8—from acting as a member of an organization or for an organization without a hearing. I am referring now to 3 (b) on page 6, which provides:

If, after hearing upon—

and so forth—

the Board determines that the evidence adduced at the hearing does not establish that an organization is a Communist-infiltrated organization—

and so forth, the Board shall cause to be served an order.

Then section (c) says after issuing such an order, these things shall take place.

Mr. NIXON. Perhaps you misunderstood my point. I said, immediately following the SACB agency decision—this is in my testimony—and prior to any appeal, the organizational death sentence is to be carried out to the prohibition of any individuals listed——

Mr. HYDE. Prior to an appeal?

Mr. NIXON. Prior to any appeal. In other words, the decision of the three men on the SACB effectuates this proscription. That is the point. I make the point that this is tantamount to a death sentence. This, together with special penalties directed at trade unions simply means that, to exist, a union must in effect have a license from 4 Government bureaucrats, whose approval is also necessary before a person can be an officer or representative in any capacity of any union. The rule of these 4 Government officials would supplant the democratic choice of the American workers in the selection of their unions and their union leadership.

Mr. CELLER. Where is there language in the bill to cover that?

Mr. NIXON. This is my language, Mr. Celler. The whole bill is that. What it requires is action by the Attorney General, plus a majority of the 5-member Subversive Activities Control Board. That makes 4—4 individuals who under this legislation would have the power to order liquidated proscribed organizations, using the vague tests which are in this law.

Secondly, it would have the power, without any appeal whatsoever, to prohibit listed individuals from having any role in a trade union or in any other organization for that matter.

Mr. CELLER. What is meant by listed individuals?

Mr. NIXON. The language of the law is that—on page 8, line 6—

the Board shall have authority to issue such order or orders as it may determine to be appropriate prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policymaking functions—

which is a list. Did I clarify your question, Mr. Celler?

Mr. CELLER. Yes. In other words, you maintain that the Board would have the broad power to proscribe listed individuals, but I did not see the language there which would indicate what you mean by listed individuals.

Mr. NIXON. Look again on page 8, line 6:

The Board shall have authority to issue such order or orders as it may determine to be appropriate prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policy-making functions.

Mr. CELLER (reading):

As provided above.

Mr. NIXON. Yes, sir, "as provided above." Understand this, there are two penalties set here. One is to prohibit individuals from acting as an officer or officers, or representative; two, to set up the machinery and appoint the individuals who shall exercise functions and duties in connection with the dissolution and liquidation of the organization and its component parts. These are the two penalties—prohibit a list of persons from relationship to the organization, and dissolve the organization.

On the first one it says—

the proscription of certain persons from continued relationship with the organization.

This goes into effect immediately, before any appeal, and upon the decision of the SACB.

Mr. CELLER. Is there a standard or a criterion set whereby the Board would declare such person proscribed?

Mr. NIXON. I would presume that that would refer back to page 5, the items which the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, or are members of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act.

I would presume that would be the basis of the listing.

Mr. HYDE. Mr. Nixon, what is the difference between that and an action in court after a decision of the lower court, and the case is pending on appeal; the judgment goes into effect immediately?

Mr. NIXON. This is not a court decision, Mr. Hyde.

Mr. HYDE. I know, but you are protesting, in effect, that the decision of the initial Board should not go into effect pending appeal.

Mr. NIXON. I am making the point that on the action of four appointed Government officials a death sentence can be laid on a trade union or any other organization in America without any appeal. That is the point I am making, sir.

Mr. HYDE. You are using very dramatic terms, of course.

Mr. NIXON. It is not the terms that are dramatic; it is the action that is dramatic.

Mr. HYDE. Is that not the same as a decision of a court?

Mr. NIXON. Do you think, sir, that the decision of a Government agency is the same as a decision of a court? You are a lawyer; I am not. I would say not.

Mr. HYDE. You do not think the decision of these administrative boards have the same effect as a decision of a court?

Mr. NIXON. The same effect? I do not know exactly what you mean by "effect," but I know they do not have the same standing. I cannot give you lessons in law.

Mr. HYDE. They are enforced by law. What other standing do you want? They are enforceable in the same way a court order is enforceable.

Mr. NIXON. Mr. Hyde, an administrative decision—and, of course, this is one of the main points that Republicans have used in their arguments against the New Deal agencies for more than 20 years—is certainly not in the same setting as a court decision.

Mr. HYDE. It is not in the same setting, but it has the same force and effect unless an appeal is taken from it.

Mr. NIXON. All right, then. What I am objecting to is its having the same force and effect.

Mr. WALTER. It was during the Democratic administration that we got the Administrative Procedure Act enacted into law to provide for judicial review of all decisions.

Mr. NIXON. I know the Walter-Logan Act did that, but the interesting thing is that the Republicans have raised a great deal of fuss about administrative agencies having too great power. Here they are proposing the most advanced and extreme arrogation of power to an administrative agency that has ever been proposed in this country. It is involved in this legislation. There is just no question about it. It is true it is not directed at a corporation or a power company; it is directed at the civil liberties of people and the rights of trade unions.

Mr. HYDE. Mr. Nixon, I am directing myself here in this question to the purpose of trying to gain some help in the drafting of legislation.

Mr. NIXON. I hope I am being helpful.

Mr. HYDE. The point about which you complain here, namely, having this decision of the Board go into effect before appeal, is no different from any other procedure that we have.

Mr. NIXON. You will notice in this proposed bill that they provide for an appeal before the dissolution goes into effect. That is apparently on the basis that some appeal is necessary, that this adds to due process in the protection of the people involved.

The point I am making is that what they give with one hand, they take away with the other hand; and that in effect there is no appeal in this case, that the death-sentence feature of this applies upon the decision of the Attorney General, and a majority of three members of the Subversive Activities Control Board; and to give them the power to dissolve, liquidate, and wind up any organization not found to be guilty of criminal actions is an unwarranted step.

Mr. HYDE. You contend there should be in the bill some form of stay of execution of the original order pending dissolution?

Mr. NIXON. You will get the impression, I think, before I am through, that I am totally opposed to this legislation, sir.

Mr. HYDE. I have already gotten that impression, but I am talking about a specific proposal.

Mr. NIXON. I do not like to be put in the position of helping you to polish up something that I think is fundamentally bad. Obviously this is one of the bad features of it, and I point it out to you not only to get rid of it but to help get rid of the whole proposition and to raise in your mind the question of how can the Attorney General, the Department of Justice, after having considered this so carefully

and drafted this so carefully, bring up such an extreme proposition to this committee.

Mr. HYDE. No further questions.

Mr. NIXON. Now, I would like to turn to the next bill which you have before you, House Joint Resolution 527. I would say it was a companion bill to the Communist-infiltrated organization bill. Where the bill we have been discussing applies to organizations, the second bill applies to workers as individuals.

This is a bill, as you know, that is titled "A bill to authorize the Federal Government to guard strategic defense facilities against individuals believed to be disposed to commit acts of sabotage, espionage, or other subversions."

Mr. HYDE. What number is that?

Mr. NIXON. House Joint Resolution 527.

Mr. GRAHAM. You are now on 527?

Mr. NIXON. Yes. When Attorney General Brownell sent up this legislation which Congressman Reed introduced, there were two bills, 527 and 528. I am addressing myself now to 527. I should say at the outset, as you know, we have screening processes for all restricted production in connection with any of our military work. This is the present situation. Those practices are in operation. This bill would extend this. This bill would authorize the President of the United States, virtually at his absolutely free discretion, to apply as a requirement for employment in virtually all of American industry vague political tests based on no intelligible standards, guides, or criteria.

In actual effect this would permit a national blacklist administered by the Federal Government in coordination with employers. This political screening would apply to workers without regard to their type of work, the limits of its application being solely within the discretion of the Secretary of Defense.

I wonder if this committee knows what the Secretary of Defense has in mind in this definition?

> The general application of these screening blacklist tests is permitted whenever the President believes that the security—

and I am quoting from the bill—

> of the United States is in danger, among other reasons due to subversive activity or disturbance or threatened disturbance of the international relations of the United States.

As you will see in the legal brief, there are really three questions submitted on this bill. What are the conditions under which this generalized screening process would go into effect? They are, as I say, virtually at the discretion of the President, because what disturbance or threatened disturbance of the international relations in the United States means or what subversive activity in these terms means is so vague as to leave complete discretion to the President of the United States.

What are the reasons for the blacklisting? Here it is rather difficult to answer because the statute is just completely vague and indefinite. It permits blacklisting of individuals as to whom there is "reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts." What are the "other subversive acts" beyond sabotage and espionage?

Because of this completely undefined content of this phrase, any worker who is active in his trade union may be subject to blacklisting. We know from our experience in this whole field the dangers of political evaluation, not directed to sabotage or espionage, not directed to the question of overthrow of the Government by force and violence, but directed to the question of whether or not a worker believes, let's say, that the Internal Security Act should be repealed.

Mr. WALTER. The thing that disturbs me more than that, Mr. Nixon, is the language on page 3, starting at the end of line 9:

The Administrative Procedure Act is not applicable to proceedings under this act.

The thing that disturbs me is this very obvious attempt to deprive a worker of the opportunity of having a court pass on a decision of an administrator. Of course I do not share your reasons for alarm because no person can be blacklisted unless he has had a trial.

Mr. NIXON. Had a hearing?

Mr. WALTER. A hearing, yes. But why are the courts closed against that individual after the decision has been reached? They spell it out. Why? I do not know.

Mr. NIXON. We think we know why. We think we know why. It is our opinion.

Mr. WALTER. You think the decisions are going to be capricious and arbitrary for the very purpose of depriving a person of an opportunity to have a court review the decision?

Mr. NIXON. We are concerned that this legislation would permit the institution of a blacklist on the vaguest political grounds. Goodness' sake, the record is replete with reference to the Democratic Party as a subversive organization; to the alleged actions of President Truman in combating the fight against the infiltration of Communists into the Government; to the actions of all kinds of trade unions as being subversive. The record is full of this. We know that workers are already being asked in these screening proceedings: "Do you read the New Republic?" "Do you read the Nation?" "Is it true that you signed a petition to repeal the Taft-Hartley Act?"

Mr. WALTER. Where were those questions asked?

Mr. NIXON. The questions are asked repeatedly in the existing screening procedures, Mr. Walter.

Mr. WALTER. Where?

Mr. NIXON. The procedures carried out by the Armed Forces. There is extensive documentation, although I make this point, sir. This committee must learn what is going on in this screening as it is now, before you pass on a generalization of this screening. I say with utmost respect, Mr. Chairman, that you must get this information from the Government itself as to what is going on and from other people who know what is going on in this field.

This is not a question of a leftist opposition. This opposition is coming from every group concerned about civil liberties in this country. Every group is concerned about it as it now operates.

Mr. WALTER. On page 3, line 14:

Nothing contained in this act shall be deemed to require any investigatory organization of the United States Government to disclose its informants or other information—

that I understand—

which in it judgment—

what does "it" refer to?

Mr. NIXON. The United States Government.

Mr. CELLER. In connection with your giving instances of the security test, I read from the bulletin of the A. F. of L., Labor League for Political Education, this last bulletin of recent date, June 11:

> The Government has recently developed some weird standards for branding people as poor security risks. For example, an American Legion officer and his wife were fired as security risks from the Government Printing Office because the Legion officer had been divorced by his first wife, who charged alienation of affections. Government boards are no more objective than the human beings appointed to them.

That has been deemed a case of a security risk, where a man, because of certain marital relations, who was in the Government Printing Office, should be dismissed as a security risk.

Mr. NIXON. Our objection, in line with what you are saying, is that simply these vague tests would put every worker in jeopardy; and the only job security he would have would be in conformity. It would put every worker in jeopardy who starts to engage in any political activity or expression of opinion about the highly controversial questions of the day. This is a power that has never been known in our country.

It is particularly important here, and I should say that we as a union have never objected to the screening procedure in classified work. We have never objected to that.

Mr. WALTER. Let us stick to the bill. I am reading right on, continuing from where I was before:

> If such information is not disclosed, the individual charged shall be furnished with a fair summary of the information in support of the charges against him.

What is a fair summary?

Mr. NIXON. Of course that would be anything that they want.

Mr. WALTER. Fair, sketchy, or what have you? Who determines whether or not it is a fair summary?

Mr. NIXON. The judge, the jury and the prosecutor in this case, which is some Government official.

Mr. GRAHAM. Mr. Walter, would you suggest "exact" or "complete"?

Mr. WALTER. No; but it certainly seems to me that a person charged with something where the penalty is as severe as this is should have the indictment against him in as much detail as is an indictment for the commission of any offense.

Mr. GRAHAM. Should he be furnished with a bill of particulars upon demand, or not?

Mr. WALTER. Maybe so. But I can recognize, of course, this matter of the disclosing of informants. I know that you get into a very dangerous field there. I thought maybe Mr. Nixon would suggest some language——

Mr. CELLER. May I interject this following observation. It is very difficult as it is now. Even where there has been a fair disclosure of the charges, the man who is being charged must prove the negative. He must prove that he is not disloyal. He must prove that he is not a security risk. So that has involved considerable difficulty in establishing the negative.

Now, if he is in the realm of vague charges, then it makes it doubly difficult for him.

Mr. WALTER. Would not the language be better if "fair" would be eliminated entirely so that it would read, "shall be furnished with a summary of the information"?

Mr. NIXON. But is that not like suggesting that the rope you hang a man with should not scratch?

Mr. WALTER. Maybe so; I do not know.

Mr. HYDE. I think, Mr. Walter, one thing we may be overlooking—and it may be a little bit unfair in our criticism of the draftsmanship of this bill; and I admit I have some misgivings about it, too—but one thing is that the purpose of this is not to find somebody guilty of a crime, but simply to bar them from defense facilities.

Mr. WALTER. That is right. But is that not a very serious punishment? It would be in my city of Bethlehem, where 90 percent of the people are dependent upon a job in a defense facility.

Mr. CELLER. Take the case we had of a so-called security risk, a lieutenant in Detroit. I have forgotten his name. He was proscribed because he had a relative who was in Poland or some other country. It was held that he was a security risk because of the presence of his mother in the satellite country; that his mother might be used as a hostage by the Communists over there to force him to do acts against his will which might react to the detriment of this country.

That is a pretty harsh ruling. Of course you may remember that that was changed, but only after there was a tremendous public outpouring of protest against it.

Mr. NIXON. May I make this point quickly, sir——

Miss THOMPSON. Mr. Chairman, I make a point of order. The bell has rung.

Mr. GRAHAM. As I announced, we will conclude the testimony. We will hear you again on Friday, after we have heard the witnesses that precede you.

The committee now stands adjourned until a quarter of 10 o'clock Friday morning.

(Thereupon, at 11:45 a. m., the subcommittee adjourned until Friday morning, 9:45 a. m., June 25, 1954.)

INTERNAL SECURITY LEGISLATION

FRIDAY, JUNE 25, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:45 a. m. in room 346, House Office Building, the Honorable Louis E. Graham (chairman of the subcommittee) presiding.

Present: The Honorable Messrs. Graham, Walter, and Hyde; and the Honorable Ruth Thompson.

Also present: Walter M. Besterman, legislative assistant; William R. Foley, committee counsel; and William P. Shattuck, assistant committee counsel.

Mr. GRAHAM. The committee will come to order, please.

(H. R. 9663 which was referred to the subcommittee since the last meeting is set out below:)

[H. R. 9663, 83d Cong., 2d sess.]

A BILL To outlaw the Communist Party and other subversive organizations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby found that the Communist Party of the United States is engaged in and committed to a worldwide conspiracy to overthrow the Government of the United States of America and to establish a totalitarian government in its place, using force, violence, and other illegal means to accomplish such objectives.

SEC. 2. Whoever knowingly and willfully becomes or remains a member of the Communist Party or of any other organization having for one of its purposes or aims the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

SEC. 3. For the purposes of this Act, the Communist Party means the political organization now known as the Communist Party of the United States of America, whether or not another designation is hereafter made in such name.

SEC. 4. This Act shall take effect upon the signing thereof by the President of the United States.

Mr. GRAHAM. The Emergency Civil Liberties Committee does not desire to be heard, but desires to have inserted in the record a copy of their resolution.

(The information is as follows:)

EMERGENCY CIVIL LIBERTIES COMMITTEE,
New York, N. Y., June 24, 1954.

Hon. LOUIS E. GRAHAM,
Committee on the Judiciary,
House Office Building, Washington, D. C.

DEAR SIR: Enclosed please find three copies of the statement of the Emergency Civil Liberties Committee to be included in the record of your hearings on House Joint Resolution 527 and House Joint Resolution 528.

Yours sincerely,

CLARK FOREMAN, *Director.*

BROWNELL MOVES TOWARD "SECURITY"

(At its May 15 meeting in New York, the Emergency Civil Liberties Committee national council unanimously adopted the following resolution dealing with the proposed antilabor legislation.)

For several years labor has been subjected to two major antidemocratic drives: (1) Efforts to condition one's earning a livelihood upon passage of political tests, and (2) those permitting government rather than workingmen to choose and control their collective-bargaining agents. Both have now become an immediate and serious danger because of their embodiment in bills drafted by Attorney General Brownell and recently introduced in the Senate.

S. 3427 would authorize the Subversive Activities Control Board, previously created under the Internal Security Act of 1950, to designate a union (and even a business organization, although this is less likely) as Communist infiltrated—a new conception even more amorphous and dangerous than the Communist action and Communist-front concepts of the 1950 law. The bill would (*a*) permit an order that particular individuals cease activity in the union, (*b*) compel the union's dissolution, (*c*) deny its use of NLRB facilities open to all competing unions, (*d*) relieve employers of the duty to bargain, and (*e*) invalidate the union security contract rights.

The bill reflects, of course, the failure to date of the Government to interfere with complete success with the workers' choice of bargaining agents through section 9 (h) of the Taft-Hartley law, congressional committees, and grand jury hearings, and by control of governmental contracts in defense plants and by its power over the employees of the Government itself.

The bill would place all unions in jeopardy of governmental receivership and would necessarily affect their policies, programs, and actions. It would mean the destruction of unions of which the administration might disapprove. This, of course, violates the basic democratic principles that underly the Wagner Act even as modified by the Taft-Hartley law, the right of workers to choose their own union.

WHOSE REASONABLE GROUND?

S. 3428 permits the Attorney General to deprive workers of employment even in private industry, that is, even with employers who have no Government defense contracts and do no defense work. The employees to be denied employment are those included in the following vague and dangerous language: "as to whom there is reasonable ground to believe that they may engage in sabotage of the industrial economy and productive capabilities of the United States, espionage or other subversive acts."

The Attorney General's theory is that modern warfare is dependent not only on plants with Government contracts, but upon our entire "industrial economy."

It would be well to note how the Government has moved toward control of all employment in the country. It began in 1947 with Government workers under the Truman Executive order. It then moved into plants with Government defense contracts and then into waterfront, longshore, and marine employment on the theory that it was connected with national security. Now having sought to lay the legal and psychological foundation for these steps, the Government has advanced the ultimate one, namely, all employment whatsoever, private and public.

The Emergency Civil Liberties Committee contests the pretext for political tests, whether of vague standards as here or otherwise, whether for governmental or private employment as here or otherwise. There is no evidence that the so-called security measures which have struck terror in Government and defense worker have been necessary or justified; certainly the proposed drastic extension of so-called security measures cannot even claim that excuse. There is no rational connection between an employee's politics (on the one hand) and his right to earn a living and its effect upon our national economy or defense (on the other). The bills must be viewed in the light of the constantly contracting perimeter of employment in which politics are not relevant. It represents the familiar choice between conformity and survival. It is nothing less than a bill to starve out dissenters. As such it is immoral and a plain violation of the Bill of Rights.

Mr. GRAHAM. We will insert in the record at this time the two statements of Mr. Royal W. France on behalf of the National Lawyers

Guild, relating to House Joint Resolution 527 and House Joint Resolution 528.

(The statements are as follows:)

STATEMENT OF ROYAL W. FRANCE ON BEHALF OF THE NATIONAL LAWYERS GUILD IN OPPOSITION TO PROPOSED HOUSE JOINT RESOLUTION 527 TO PROVIDE FOR THE PROTECTION OF DEFENSE FACILITIES

My name is Royal W. France. I reside at 310 East 12th Street, New York City. I am a member of the New York bar and a member of the National Lawyers Guild and appear here on behalf of that association.

The National Lawyers Guild is an association of members of the bar which, since its organization in 1936, has been actively engaged among other things in efforts to protect our democratic institutions and the civil rights and liberties of all the people.

The National Lawyers Guild is opposed to the passage of this bill because it regards the bill as a dangerous and far-reaching encroachment on the fundamental liberties of the American people, including freedom of speech, press, assembly, and the guaranty against punishment without due process of law. It believes that this bill if enacted will go far toward undermining the very foundations of our democratic system.

House Joint Resolution 527 provides that upon Presidential proclamation to the effect that "the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity (not otherwise defined), or of disturbance or threatened disturbance of the international relations of the United States," the President may issue regulations to bar from access to any defense facility "individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts."

A "defense facility" is defined as any plant, factory, or service institution which the Secretary of Defense designates as such. Not only are no standards afforded for the Secretary's determination, but the broad scope of authority can be judged by the preamble which says persons are to be "barred from access to facilities, injury to which would be harmful to the industrial economy and productive capabilities of the United States, and, therefore, to its military effectiveness."

These regulations are to be effectuated by such officers or agencies as the President designates. While the bill provides for charges against the individual and an opportunity for hearing before deprivation of employment, these hearings are to be held before administrative bodies with no provision for judicial review and "Nothing contained in this act shall be deemed to require any investigatory organization of the United States Government to disclose its informants or other information which in its judgment would endanger its investigatory activity."

It seems clear that:

1. Should this bill be enacted, the President could issue the proclamation provided for immediately. It is often said that the international relations of the United States are now "disturbed" and that the security of the United States is threatened. That is the asserted basis for our entire security program as it has unfolded in successive installments since 1947. If such a proclamation were issued, it could remain in effect for the duration of the cold war, which might last, according to a recent estimate, for possibly 40 years.

2. Any individual employed in industry who was associated with any group or party critical of those in power could be blacklisted—denied employment indefinitely—although he had done nothing illegal or injurious to the national welfare or interests. This grave punishment and the brand of potential traitor or subversive could be visited upon innocent persons on the sole ground that they might at some future time perform "subversive acts" (whatever that undefined term may be held to mean). We have had ample illustrations, particularly of late, of the indiscriminate—even cruel manner—in which people, even the highest public officials, are accused of shielding spies or committing "subversive acts."

3. The power that would be conferred on some undesignated official chosen by the President would be almost unlimited. The term "subversive act" is not

defined and is without clear meaning. The individual to be blacklisted is accorded no real safeguard against arbitrary action. No evidence entitled to credence in any court need be presented to him or even to the officer or agency to make the decision. No witnesses need be produced to confront the accused or submit to cross-examination. No right of appeal is provided. But the punishment to be visited upon those blacklisted is of great severity—the deprivation of the right to work in any capacity in any segment of industry which the Secretary of Defense may unilaterally designate and the inevitable destruction of his reputation by branding him as a potential spy or saboteur, after a mock hearing such as described above. In our system of justice, of which we are duly proud, one accused of even the pettiest crime is entitled to a trial by jury with the full safeguards of the judicial process before even the most minor punishment is inflicted. This bill would virtually deprive an individual of the possibility of earning a livelihood, either by actually barring him from specified sections of industry or by so destroying his reputation as to make him entirely unemployable; and this punishment, which may be far more severe than many punishments for many crimes, is proposed to be inflicted after a determination, not by any court or any jury, but merely by an appointed administrative official. The individual is to be punished not for what he has done, but for what someone thinks he may be inclined to do. If the Congress should sanction the imposition of such a penalty upon individuals upon such a basis and with such lack of safeguards against abuses, then our claim that we place a high value on the rights of individuals will surely lose its validity.

CONSTITUTIONALITY OF THE BILLS

1. *House Joint Resolution 527 clearly infringes first amendment rights of free speech and assembly.*—No guides or standards are provided to enable the designated agency to determine whether an individual is likely "to engage in sabotage, espionage, or other subversive acts." On what basis is this to be determined? Obviously, the test cannot be one of overt conduct. Persons to be barred are not those found to have committed or conspired to commit any so-called subversive acts but rather those likely to do so. Within the context of present governmental operations in the loyalty and security field, it must be assumed that the guides to be used will be those of membership in "subversive" organizations; association—past or present—with other persons who are or have been members of such organizations; or expression of views which, in the opinion of the enforcing agency, indicate a tendency toward "subversion." In other words, the criteria upon which the punishment of blacklisting will be based will be speech, association, membership. In the face of the clear mandate of the first amendment—Congress shall make no law abridging freedom of speech or assembly—this bill is plainly unconstitutional.

2. *The bill violates the due-process requirements of the fifth amendment.*—While technically this bill defines no crime and provides no criminal penalties, its effect, as has been shown, will be at least as drastic. To be deprived of the means of livelihood is no light punishment to be casually inflicted. A statute providing such an extreme penalty should clearly define the prohibited acts so that the ordinary citizen may know what is prohibited and may guide his course of conduct accordingly. But how can persons avoid conduct upon which some Government official may conclude that "there is reasonable ground to believe they may engage in * * * subversive acts"?

The vagueness of these undefined terms also have the necessary effect of delegating almost unlimited power to appointed officials, without any of the safeguards of the judicial process. So-called hearings in which the defendant has no opportunity to confront witnesses against him and from which no judicial review is allowed do not provide due process. True, the Supreme Court in *Bailey* v. *Richardson* (341 U. S. 918) affirmed by an equally divided Court the opinion of the Court of Appeals for the District of Columbia Circuit (182 F. 2d 46) that since Government employment is a privilege, a Government employee is not entitled to judicial review of a loyalty board discharge. But that holding hardly forms precedent to support the constitutionality of this proposed bill. Government employment may perhaps be a privilege, but surely the right to work for any employer whom the Defense Secretary may designate, in any capacity, anywhere in the United States, and the right to be free from arbitrary branding as a potential spy or saboteur, cannot be regarded as a privilege.

CONCLUSION

This bill is dangerous in principle. The courts have long held that to deprive a man of his right to work in a lawful occupation is a valuable legal right entitled to the full protection of the Constitution. To deprive a worker of that right because of his membership in a lawful organization or because some Government authority holds that "there is reasonable ground to believe" that he might violate a law even though he has as yet violated none, is contrary to the most elementary principles of our democracy.

It would be well to note how the Government has moved toward control of all employment in the country. It began in 1947 with Government workers under the Truman Executive order. It then moved into plants with Government defense contracts and then into waterfront, longshore, and marine employment on the theory that these were connected with national security. Now having sought to lay the legal and psychological foundation for these steps, the Government has advanced the ultimate one, namely, the proposal to subject virtually all employment, private and public, to Government control.

There is no justification and there can be none for such unbridled invasion into the daily lives of ordinary working people, and to sanction such invasion by allowing Government officials to destroy a citizen's reputation and earning power without judicial safeguards of any kind is the most flagrant flaunting of the whole basis of a free society. We believe that measures such as this injure rather than support or defend the security of the Nation and its democratic institutions.

The Guild, therefore, strongly urges this committee to reject this bill.

STATEMENT OF ROYAL W. FRANCE ON BEHALF OF THE NATIONAL LAWYERS GUILD IN OPPOSITION TO PROPOSED HOUSE JOINT RESOLUTION 528, TO LIQUIDATE "COMMUNIST-INFILTRATED" ORGANIZATIONS

My name is Royal W. France. I reside at 310 East 12th Street, New York City. I am a member of the New York bar and a member of the National Lawyers Guild and appear here on behalf of that association.

The National Lawyers Guild is an association of members of the bar which, since its organization in 1936, has been actively engaged, among other things, in efforts to protect our democratic institutions and the civil rights and liberties of all the people.

The National Lawyers Guild opposes House Joint Resolution 528 in the belief that it is a bill which would tend to undermine our democratic institutions—the firmest foundation of our national security.

PROVISIONS OF THE BILL

House Joint Resolution 528 would create a new concept, that of a Communist-infiltrated organization, defined as one which "(A) is substantially directed, dominated, or controlled by a Communist-action organization or by a member or members thereof, and (B) is in a position to affect adversely the national defense or security of the United States." If the Subversive Activities Control Board (hereinafter called the SACB) finds an organization to be Communist-infiltrated, it must, under this bill, direct its complete dissolution. Under the proposed bill, the character and purpose of the organization is not considered at all; in fact, in the preamble it is assumed that the organization in question is one established "for legal and legitimate purposes."

The procedures outlined are similar to those in the Internal Security Act. They are initiated by the filing of a petition by the Attorney General alleging that the organization is Communist infiltrated. Upon notice, hearings are held before the SACB and its findings are conclusive if supported by substantial evidence.

In determining whether an organization is Communist-infiltrated, the Board must take into consideration the extent to which the management and supervision of the charged organization is in the hands of members of the Communist Party or world Communist movement, the extent to which its resources or personnel are used to promote the objectives of the Communist Party or of the world Communist movement, the extent to which its policies do not deviate from those of the world Communist movement. Upon a finding by the Board that the organization is a Communist-infiltrated organization, the Board so reports

and serves its order of dissolution upon the organization. Opportunity for judicial review is afforded but the findings of the SACB are conclusive if supported by substantial evidence.

What is substantial evidence? Under the decisions, it is more than a mere scintilla of evidence, but clearly it need not be as much as half the evidence. Certainly it is not as much as the preponderance of the evidence required for designation as a Communist organization under the Internal Security Act.

The Board retains jurisdiction for the purpose of effectuating the necessary details of dissolution. The Attorney General, in the meantime, is authorized to take such action as may be necessary in the district court to compel compliance with Board orders concerning such dissolution.

The Board and the Attorney General have power, under the bill, to prevent any officer or other leader of the organization from exercising any administrative or policymaking functions. For this purpose the Attorney General or the Board may remove from office or representation only persons offensive to them and see to it that such officers are replaced with persons of whom the Attorney General approves. There is no limitation upon the power of the Attorney General or the Board to remove offending personnel. As Senator Ferguson said in introducing the bill, "In the meantime, it (the SACB) could eliminate from the organization any individual who might impede its liquidation or be otherwise undesirable."

There is a proviso under which ousted officers of the organization may perfect the appeal and may continue to act for the organization in proceedings before the Board. But if officers of an organization are ousted and deprived of all policymaking and administrative power and are replaced by persons approved by the Attorney General, it seems unlikely that the ousted officers will be able to be very effective in perfecting judicial review. Lacking support from the newly approved officers of the organization, it is doubtful that they would be free to use the funds and other resources of the organization to carry on an effective campaign for the organization's survival. Thus while appeal from the SACB's order is provided, pro forma, it is likely that the SACB's initial order will spell certain death to the organization.

EFFECT OF THE BILL

It must be noted that this bill is not aimed at the Communist Party, or at those organizations commonly termed "Communist fronts." Such organizations are covered by the Internal Security Act of 1950, and are expressly excluded from the operation of this bill. This bill, therefore, is expressly designed to affect organizations which cannot be found to be fronts for the Communist Party.

If this bill were to become law, the Communist Party and Communist-front organizations could continue to exist (although under the severe disabilities imposed by the Internal Security Act), but organizations found to be Communist-infiltrated because of mere participation of one or more Communists in their leadership, would be dissolved forthwith.

The logic of this distinction is rather difficult to follow. If the Communist Party may lawfully continue to operate, if membership in the Communist Party is not a crime (and the Internal Security Act specifically so provides), then on what possible theory can an organization tainted with the presence of Communists or a single Communist among its leadership be dissolved? If the bill provided for the removal of such leadership (as 9 (h) of the Taft-Hartley Act was designed to do), it would be objectionable and would constitute an unconstitutional deprivation of first amendment rights, but at least it would be consistent with the theory of existing legislation.

The bill says flatly: If an organization—any organization—no matter what its purposes and no matter how lawful its activities and objectives is found to be substantially directed by Communists, the organization must dissolve. This is the clearest case of deprivation of freedom of assembly completely without regard to wrongdoing. An organization with thousands, even hundreds of thousands of members may be destroyed and its members branded because a single active member who did nothing improper and whose other associations were unknown to his fellow members, was, or was alleged by an undisclosed informant to be a Communist.

In determining that an organization is so infiltrated, the SACB will consider the extent to which the management is in the hands of members of the Communist Party but there is no standard to guide it—if the organization is thus infiltrated to any extent—and only substantial evidence is needed to show this, the Board has authority to order dissolution. Senator McCarthy has said that the

State Department and the Army are infiltrated with Communists in high policy-making posts. But for the fact that these are Government agencies, they would form perfect targets under this bill.

Similarly, the Board will consider the extent to which the policies of the organization do not deviate from those of the Communist movement. Here again there are no minimum standards and no guides. If the policies of the organization on public housing, segregation of Negroes, minimum wage rates or public safety measures, for example, do not deviate from those of the Communist Party, the criterion might well be met.

The Board will consider the extent to which the resources and personnel of the organization are used to promote the objectives of the Communist Party. But the bill does not say that the resources must be knowingly used for this purpose, nor does it say how the objectives of the Communist Party are to be determined. Would it be impossible, under this bill, for the Board to conclude that a strike in a major industry promoted the objectives of the Communist Party and that any labor union that called or supported such a strike—regardless of its reasons for doing so—was forwarding Communist objectives and should be liquidated?

Finally the Board will consider whether the organization "is in a position to affect adversely the national defense or security of the United States" and in this connection will evaluate "the extent to which it is in a position to impair the effective mobilization or use of economic resources or manpower in connection with the defense of or security of the United States." This criterion provides no real limitation upon the scope of the bill. If elevator operators and porters employed by the Government can be made subject to dismissal on a loyalty check (and such employees have in fact been discharged for such reasons), if Army doctors and dentists are security risks, then barbers, waiters, and bootblacks may be found to occupy similarly sensitive positions and their labor and fraternal organizations may be found to affect the security of the United States. If the chairman of the House Committee on Un-American Activities can propose investigation of the churches because their alleged infiltration by Communists presents a threat to the security of the country, if teachers of mathematics and English can be dismissed for refusal to disclose political beliefs and associations, all of their organizations—religious, social, and labor union—are threatened by this bill. Certainly any organization which seeks to influence public opinion—by the distribution of a periodical, by the holding of discussion meetings, or simply by the passage of resolutions—is in a position "to impair the effective mobilization * * * of manpower," and hence may come within the broad sweep of this bill.

This bill presents the clearest case of deprivation by Government of the right of freedom of association. It would subject every organization to political tests, none could exist but at the sufferance of those temporarily in control of the Government. The test of nondeviation from Communist Party principles, originally introduced into our law by the Internal Security Act, would become part of all organizational life, as such nondeviation becomes one of the tests by which Communist infiltration is determined. To be safe, every organization would have to deviate from positions taken by the Communist Party regardless of the merits of those positions. Even then, safety would not be assured, since an organization may be found to be tainted if one of its leadership (whether or not holding office) is found to be a member of the Communist Party or if the organization did anything which a public official thinks promoted or helped some objective of the Communist Party. We know from experience that such findings are easily made in our current political atmosphere. The kind of logic that is used in branding an organization as Communist-dominated is well illustrated by the summary, appearing in the American Machinist of February 1953, of the results of a survey made for the Timken Roller Bearing Co., which said in part: "The report does show a surprising coincidence of attitudes between CIO official publications and Communist papers. Where attitude toward free enterprise is involved, CIO follows the Communist Party line with the persistence of a shadow."

Aside from constitutional objections, which are noted elsewhere, this bill's concept is basically un-American and undemocratic. If there is any feature fundamental to a democratic society, it is the right of its members to free association in organizations whose policies and officers are chosen by its members, free from governmental dictation. The exercise by the Government of licensing power based upon opinion or association, or even the threat of the use of such power, is basically inconsistent with the theory of our Constitution.

THE CONSTITUTIONAL ISSUES

1. This bill violates the first amendment

This bill flatly denies the right of persons freely to assemble and to form organizations for lawful purposes; it denies to employees the right to bargain collectively through representatives of their own choosing. These rights are the very fundamental rights guaranteed by the "free assembly" provisions of the first amendment. (*NLRB* v. *Jones & Laughlin*, 301 U. S. 1; *Thomas* v. *Collins*, 323 U. S. 516.) A finding that an organization is Communist-infiltrated and hence subject to dissolution may be based entirely upon the association of one or more active leaders of an organization with some other organization wholly without regard to the nature of the activities of the organization to be dissolved, or the individual's conduct within it.

Dissolution may also be based, in part at least, upon the expression of opinions and policies by the organization. When the Government or any of its agencies is authorized to destroy an organization because of Government disapproval of views expressed by that organization or its leaders, the flagrant abridgement of the constitutionally protected rights of free speech and assembly is clear.

A more violent assault upon the right of free assembly and the free choice of officers and representatives is provided during the interim period between the Board order and the final court review. In this interim period, the Attorney General and the Board are to have arbitrary power to remove from office or from any position of leadership or management any persons he finds undesirable and to see that they are replaced by persons approved by the Attorney General. These officers are to be replaced not because they have in any way failed to carry out their duties to maintain and further the objectives of the organization. On the contrary, persons will be selected to replace them on the ground that they will be more cooperative (with the Attorney General) in carrying out the dissolution of the organization.

As Mr. Justice Jackson said, concurring in *Thomas* v. *Collins*, supra, at page 545, "It cannot be the duty, because it is not the right, of the State to protect the public against false doctrine. The very purpose of the first amendment is to foreclose public authority from assuming a guardianship of the public mind * * *."

The decision in *A. C. A.* v. *Douds* (339 U. S. 382), upholding section 9 (h) of the Taft-Hartley Act against first amendment objections, is not to the contrary, for the Court there was careful to point out that the provision in no way interfered with the right of the union to continue in existence—in any event—as a functioning organization. If the union did not choose officers who could and would sign non-Communist affidavits, the union would lose certain privileges under the Labor Relations Act but it would not be dissolved. Under the proposed bill, dissolution is mandatory.

2. This bill is a bill of attainder

Article I, section 9, of the Constitution reads: "No bill of attainder or ex post facto law shall be passed." A bill of attainder is a legislative act which inflicts punishment without a judicial trial. *Cummings* v. *Missouri* (4 Wall. 277), and it would be hard to believe that the power to "attaint" thus denied to the legislature could be delegated by it to an executive official.

The reasons which the Supreme Court announced for rejecting, in *American Communications* v. *Douds* (339 N. S. 382), the argument that section 9 (h) of the Taft-Hartley Act was a bill of attainder exhibits most aptly why this bill violates article I, section 9. The Court said, at page 413: "The unions' argument as to bill of attainder cites the familiar cases, *United States* v. *Lovette* (328 U. S. 303 (1946)); *Ex parte Garland* (4 Wall. 333 (1867)); *Cummings* v. *Missouri* (4 Wall. 277 (1867)). These cases and this also, according to the argument, involve the proscription of certain occupations to a group classified according to belief and loyalty. But there is a decisive distinction. * * * This distinction is emphasized by the fact that members of those groups identified in section 9 (h) are free to serve as union officers if at any time they renounce the allegiances which constituted a bar to signing the affidavit in the past. * * *"

But under the proposed bill an organization found to be Communist infiltrated is to be dissolved and there is nothing that the organization can do to "renounce the allegiances" and so regain the right to function.

3. This bill deprives an organization and its members of property without due process of law

The bill is, in the first place, void for vagueness. The phrase "the extent to which" makes the criteria of the Board's determination so vague and ambiguous

as to violate constitutional due-process guaranties. John W. Davis, the eminent lawyer, commenting on the same phrase in the Mundt-Nixon bill, advised the committee considering the bill:

"Or take the introductory phrase itself, as used throughout—'the extent to which, etc.'—what are the limits which those words envisage? To how great an extent, how customary a practice, how definite, pervasive, or continuous a policy? There would seem to be no room here for the application of any doctrine of de minimis. But assume, if you will, that the organization contains some members or even some 'leaders' who (as under the clause (H)) recognize the 'disciplinary power of such foreign government' or (as under clause (J)) 'consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization,' how many or what proportion of such individuals are to be held sufficient to color the entire organization? What is to be the status of a dissenting member, a minority of members, or even a majority who do not hold such views? Are they and the organization to be condemned on the principle of noscitur a sociis, i. e., guilt by association?"

Of similar vagueness is the term "adversely affect the national defense." As the discussion above has indicated, almost anything can affect the national defense, and speech most of all.

The terms "Communist-action organization" and "world Communist movement" defined here by reference to the definition in the Subversive Activities Control Act are by no means unambiguous. Of a similar character is the phrase "substantially dominated." The constitutional validity of these definitions and terms is even now pending before the courts in *Communist Party U. S. A.* v. *Subversive Activities Control Board* (U. S. Court of Appeals, District of Columbia Circuit).

The procedural provisions of this bill pay no more than lip service to the requirement of due process. A hearing is granted, on proper notice, but the hearing is one in which, because of the vagueness of the definition and the fluidity of the language of the criteria used to support the charge, can only afford an opportunity to an organization to prove its innocence by showing that none of its leaders are Communists, that all of its policies have "deviated" from Communist policies, and that none of its resources have served wittingly or unwittingly to promote any Communist objectives—even a thoroughly lawful and worthy objective such as, perhaps, lower taxes.

Since after the initial Board order, the control by the Attorney General over the organization is tantamount to that of a receivership, the provisions for review by the courts have a hollow ring. In any event, the survival of an organization, which may represent hundreds or thousands of members and their reputations and livelihoods, is to be decided by a politically appointed administrative tribunal and sustained on appeal, if supported, not beyond reasonable doubt, or by a preponderance of the evidence (as under the Internal Security Act), but merely by substantial evidence.

RECOMMENDATION

The National Lawyers Guild has always opposed in principle any form of Government licensing of unions, or of any other organization. The exercise by Government of any such power invades fundamental rights of free people to associate together freely to promote common lawful ends by lawful means without governmental interference. The idea of Government "approved" or "disapproved" unions or other organizations is abhorrent to the democratic process in which freedom of speech and assembly and the fine traditions of a free labor movement play a vital and indispensable part.

The National Lawyers Guild therefore urges this committee to reject House Joint Resolution 528.

Mr. GRAHAM. We have scheduled today first the National Lawyers Guild and Representative Herman P. Eberharter, of Pennsylvania; and then the American Communications Association; Mr. Herbert Kurzer, of the International Fur and Leather Workers' Union; and finally, if we reach him, Russell Nixon, of the United Electrical, Radio, and Machine Workers of America.

As I understand it Mr. France is here on behalf of the National Lawyers Guild.

Mr. France, I might explain to you as a matter of courtesy for Members of Congress, if Mr. Eberharter should appear we will hear him. Otherwise we will go in the order which was announced. If he comes in we will ask you to step aside for a moment.

STATEMENT OF ROYAL W. FRANCE, REPRESENTING NATIONAL LAWYERS GUILD

Mr. FRANCE. I understand, Mr. Chairman.

Mr. GRAHAM. All right. You may proceed.

The members of the committee are Mr. Hyde, of Maryland; Miss Thompson, of Michigan; and I am Mr. Graham. We expect Mr. Walter in soon. Mr. Celler has not shown up as yet.

Mr. FRANCE. My name is Royal W. France. I am a member of the bar of the New York State and United States courts, including the Supreme Court of the United States. I practiced law for 23 years in New York City as a corporation lawyer.

Then I became a college professor and for 23 years I was professor of economics and law in Rollins College in Florida. I also was guest professor at Hamilton College, the Centro De Estudios of Mexico, and the University of Massachusetts.

Two years ago I returned to the active practice of law in New York City and I am a member of the National Lawyers Guild, on behalf of which I have presented a statement to the committee.

Mr. GRAHAM. May I interrupt you for a moment, please. That statement has already been placed in the record. Both these statements you have submitted to us are already in the record.

Mr. FRANCE. Thank you.

I merely in my oral testimony will call attention to what I consider some of the high spots of this statement.

Mr. GRAHAM. We would appreciate it if you will, Mr. France, because of the other witnesses. We seek to accommodate them all. Sometimes some witnesses go too long.

Mr. FRANCE. Yes.

Mr. GRAHAM. You may proceed.

Mr. FRANCE. Under the provisions of House Joint Resolution 528 an organization, if found to be Communist-infiltrated, must under the bill be liquidated. This is to come about by the finding of a board.

There is opportunity provided in the bill of a sort for judicial review, but the opportunity is very limited because in the first place if there is substantial evidence, as the bill says—it does not say "If there is a preponderance of the evidence," and it certainly does not say, "beyond a reasonable doubt"—if there is any substantial evidence then the findings of the SACB must be sustained.

Moreover, during the interim period the Attorney General is authorized to remove the officers who may have been found in his judgment to be undesirable, and thus the opportunity for judicial review is distinctly limited by the fact that—Mr. Chairman, do you want to ask a question?

Mr. GRAHAM. Do you feel there should be judicial review?

Mr. FRANCE. Well, I go further than that, Mr. Chairman. I think there should be judicial review.

Mr. GRAHAM. All right. Then you may go further.

Mr. FRANCE. I think that the entire content of this type of bill, which goes beyond anything that we have done so far, I think, making organizations which are merely infiltrated, so-called, without the knowledge of the members necessarily, without any evidence whatsoever that these organizations have done anything improper, merely on the anticipation that because of the participation of someone in the organization who is said to be a member of a Communist-action organization—the organization itself can be liquidated. All of its members, perhaps thousands of members engaged in the most worthy kind of a cause, completely without knowledge of any impropriety or perhaps without knowledge of the affiliations of this person or persons—the whole organization can be liquidated.

Mr. GRAHAM. Mr. Hyde, do you wish to ask a question?

Mr. HYDE. Yes.

Mr. GRAHAM. Go ahead, Mr. Hyde.

Mr. HYDE. I have a couple of questions on two points you mentioned.

Assuming—which you do not want to assume, I understand—but nevertheless assuming that we pass some such legislation, I gather from what you say instead of saying "Communist-infiltrated" you would prefer the language "Communist-dominated."

Mr. FRANCE. Yes, certanly. If the legislation is to be passed at all it seems to me that such a vague expression as "Communist-infiltrated," which is actually not susceptible to definition——

Mr. HYDE. The word "dominated" would be preferable?

Mr. FRANCE. Certainly the word "dominated" would be preferable if the legislation is to be passed at all.

Mr. HYDE. A second question: You say in the present bill it provides for the liquidation upon substantial evidence. You think it should be preferable, making the same assumption I have just made, to have it "fair preponderance" or "beyond a reasonable doubt"?

Mr. FRANCE. It seems to me what we have here is really something amounting to a punishment. People, when they are deprived of their rights to associate—perhaps this may be a fraternal organization in which they have invested funds—when they are deprived of their right to associate it comes pretty close to being a punishment, so that I would prefer the expression which is used in the criminal law, "beyond a reasonable doubt," but certainly the very minimum——

Mr. HYDE. Even though it comes close to it, Mr. France, it is not a criminal prosecution.

Mr. FRANCE. That is right.

Mr. HYDE. It is only a criminal prosecution where we have ever used the standard of reasonable doubt.

Mr. FRANCE. As I say, since it is not technically a criminal prosecution, although I think it has many of the aspects of a criminal prosecution, in that it actually does inflict punishment, I would say that certainly the expression "by a preponderance of the evidence" would be much better than "by substantial evidence," because substantial evidence might mean almost anything.

I have a petition here which was signed by 19 of the outstanding religious leaders of the country; Bishop Donegan, the Protestant Episcopal bishop of New York; Bishop John Wesley Lord, of the Methodist Church; and so on, men of that type; in which they asked another committee of the Congress to investigate some of these people

like Crouch who are being used to say that people are Communists.

Mr. HYDE. People like whom?

Mr. FRANCE. They do not mention Crouch here, but you may recall, on Crouch, that the Alsop brothers have asked for an investigation of Crouch as to his credibility.

The point is that substantial evidence might be evidence merely by some paid informer that somebody is a Communist, regardless of what the preponderance of the evidence might be.

Mr. HYDE. Do you mean to say that these churchmen and the Alsop brothers all now want to engage in witch hunts?

Mr. FRANCE. This statement says:

We have strong reason to believe that some informers who have traduced large number of citizens have not spoken the truth. Sworn admissions by some of them, conflicting statements at different times, and the testimony of ministers of the Christian church and others as to the untruthfulness of various of these professional witnesses should be the subject matter of investigation by the Subcommittee of the Senate on Civil Rights.

Now, the Subcommittee of the Senate on Civil Rights has not felt that that was a proper activity, at least so far, and I believe that the question has been referred to the Department of State.

I am merely talking now on another point, and that is that any statement by any witness under this idea of substantial justice, regardless of what the weight of the evidence was, could be held to be substantial; so I think that the expression is an extremely unfortunate one.

The aim of these measures obviously goes far beyond the controlling or outlawing of the Communist Party. This now gets into every kind of an organization; labor unions, religious organizations, educational organizations, any type of organization.

And the bill provides as a criterion the extent to which persons may be active in it. This is an extremely vague expression. I do not believe it is susceptible of interpretation by the courts.

Mr. WALTER. Which section are you talking about?

Mr. FRANCE. I am talking now, Congressman Walter, about 528.

Mr. WALTER. Which section?

Mr. FRANCE. I am talking about the section which says—subdivision (2) says——

Mr. HYDE. Which subdivision?

Mr. GRAHAM. On which page are you reading?

Mr. FRANCE. 528.

Mr. GRAHAM. Which page are you on?

Mr. FRANCE. I had better get the bill itself.

Mr. GRAHAM. All right.

Mr. FRANCE. Then you can follow me better.

Mr. SHATTUCK. That would be page 5.

Mr. FRANCE. Page 5. Yes, at the top of page 6 of 528:

The extent to which persons who are active in its management, direction or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, or are members of, any Communist-action organization, Communist foreign government, or the world Communist movement——

Mr. WALTER. Mr. France, you just said that the aim is beyond outlawing the Communist Party. I want you to indicate where in this bill there is anything to indicate that that conclusion is a proper one.

Mr. FRANCE. What I meant, Congressman Walter, is that this bill is not directed at Communist-action organizations or even Communist-front organizations; it goes far beyond that and provides for the liquidation, which is certainly equivalent to outlawing, of any organization which is found to be Communist-infiltrated.

Mr. WALTER. You think that under this language it would be possible to liquidate the Elks because a member of an Elks lodge was a member of the Communist Party?

Mr. FRANCE. I think so. I think under this language——

Mr. WALTER. Will you point out the language to me under which that would be possible?

Mr. FRANCE. Congressman Walter, in the determination of a board the statement is made——

Mr. HYDE. What section?

Mr. FRANCE (continuing). That the board may take into consideration the extent to which persons who are active in its management, the extent to which its funds, resources, or personnel are being used, the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate, the extent to which it is in a position to impair the effective mobilization or use of our economic resources——

Mr. WALTER. Do you seriously contend that if this board should capriciously and arbitrarily say that the Elks lodge of the District of Columbia was Communist-dominated because there was a Communist member any court in the land would sustain such a finding?

Mr. FRANCE. Congressman Walter, whether it would or it would not the organization would be effectively destroyed because of the interim provision. The interim provision calls for the placing of the organization in a position where the officers who have been its officers while it has been accused are replaced by others. Would these others pursue the matter through the courts when they were put in there by the Attorney General, or with his approval.

Mr. WALTER. I would imagine that the very same thing would happen that happened to your organization, when it was charged, with a great deal of propriety, that your organization was Communist-dominated. A great many people resigned from it, Justice Pecora and a great many others.

Mr. FRANCE. That is true, and that would be true of many other organizations which may, and I believe would be, as I believe the National Lawyers Guild will be, found to be completely guiltless of the charges made against them.

At the present time, as you may know, the Court of Appeals of the District of Columbia has held that the Attorney General should not place this organization on his list until there has been a court hearing.

Here we have a situation in which the charge of Communist infiltration so completely hampers an organization during the interim period that it is doubtful whether it could effectively do the thing which the National Lawyers Guild is doing and which I predict, Congressman Walter—I do not know that I have a right to pose as a prophet, but knowing something about the National Lawyers Guild I predict that the decision of the courts will find that these charges are baseless. So if it were in the position that it would be under this bill, where the Attorney General could remove all of its officers, every

lawyer who was in it—and there are many very fine lawyers in it and many very fine lawyers who have dropped out just because of these charges—every lawyer who is in it might be branded as having belonged to a subversive organization without real opportunity for review having been had in the courts.

Mr. HYDE. Mr. France, might not that fear be cured by a provision for a stay order pending appeal?

Mr. FRANCE. I think that would help, certainly, if it meant that these interim provisions under which officers could be removed could not be taken if the organization proposed to appeal to the courts.

Mr. HYDE. Yes.

Mr. WALTER. Do you not think that the language of the bill, Mr. Hyde, provides for that? Look on page 12, line 7:

If no such petition has been duly filed within such time—

and so on. In other words, the order does not go into effect, as I understand it.

Mr. HYDE. I would say it is implied.

Mr. WALTER. I think it says that.

Mr. FRANCE. The vice of it is, Congressman Walter, as I read this bill, when the accusation is made the officers can be removed.

Referring again to the National Lawyers Guild, if this bill has been in effect, rather than the one under which we are now operating, I doubt whether any effective action could have been taken by the guild to clear itself and its members of the charges, because other officers would have been put in who might not have that desire, who might have the contrary desire.

Mr. HYDE. Mr. France, do you not think you perhaps have laid too much stress on subsection (d) of section 2, which is merely a guide, in view of the provisions on page 2, section 1, I suppose it is, which defines a "Communist-infiltrated organization" as one—

which is substantially directed, dominated, or controlled—

and so forth by Communists and—

is in a position to affect adversely the national defense or security of the United States.

I suppose you would prefer the word "substantially" be stricken from that. Let us assume we did. That would be what the Board would have to find, that they were substantially directed; or, if we struck that, that they were directed and dominated and would be in a position to adversely affect the security of the United States. They would have to find those two things to find there was a Communist-infiltrated organization.

Mr. FRANCE. In the first place, there is a finding by the Attorney General. This does not protect the organization by due process, as called for by the fifth amendment. I doubt whether the hearings before the Subversive Activities Control Board are going to meet the requirements of due process as called for by the fifth amendment.

You know now that the constitutionality of this is before the courts, and we will ultimately have a decision on the McCarran-Walter Act, as to whether the kind of hearing which is given before this type of board does represent due process.

Under this bill and under the companion bill, 527, as I understand the bills, witnesses can be used with whom the accused does not need

to be confronted, evidence can be used which is not subject to cross-examination; so whether any of this meets the requirements of due process called for by the fifth amendment is still a debatable question.

Mr. HYDE. Getting to 527, why does it have to meet due process? Are you depriving someone of liberty or property within the meaning of the Constitution?

Mr. FRANCE. I think you are depriving him of the most vital kind of property, which is his job. Some courts have held that there is a property right in a job. What is the effect on a man?

Mr HYDE. Property right in a job? What court has held that?

Mr. FRANCE. I think the Supreme Court of the State of Washington. I can supply the citation.

Mr. HYDE. In the Bailey case the Supreme Court said, with reference to a Government job, at least, that there was no right to it.

Mr. FRANCE. The Bailey case was strictly limited to the loyalty requirements for Government employees.

Mr. HYDE. The court in that case said there was no constitutional right to a job.

Mr. FRANCE. Said there was no constitutional right to a Government job. It limited it to a Government job.

Now, what is the situation of the ordinary worker? He is a tradesman. He has a trade or occupation by which he makes his living. This bill, 527, can actually take away the most valuable right that a man has, the right to make a living. If he cnnot make a living at his trade he may not be able to make a living at all.

Mr. HYDE. Do you think a man has a right to make a living in a defense plant if he is a member of an organization which has said its purpose is to destroy it?

Mr. FRANCE. I do not think that is what 527 says. I think that 527 says that the individual—

As to whom there is reasonable ground to believe.

Mr. HYDE. Where are you reading?

Mr. FRANCE. I am reading on page 2.

As to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts.

Now what does that mean—"other subversive acts"?

Mr. HYDE. Do you think if there is evidence to show we have reasonable grounds to believe that a person is going to engage in such activity, that person then has a constitutional right to a job in a defense plant?

Mr. FRANCE. Even there, where nothing has been proved against a man, where it is merely a suspicion that he may do something, I think it is very dubious legislation to remove him from his job. Nothing has been proved he has done. This is somebody's idea of what his intentions may be.

Mr. HYDE. Suppose you have reasonable grounds to believe someone in your office is revealing confidential information on your clients in your office. Do you think you should remove him from the job or keep him there?

Mr. FRANCE. I think for the employer to remove a man from his job is one thing. I think for congressional legislation to require that a man be removed from his job, if there is reasonable ground to believe

that he may do something in the future, without any proof that he has done anything——

Mr. HYDE. All right. The United States Government is buying all the planes made by the Fairchild plant at Hagerstown, for example. They are Fairchild's only customer for the C–119's. Do you think the United States Government should have anything to say if they find there is an employee at that plant concerning whom there is reasonable ground to believe he is going to engage in sabotage?

Mr. FRANCE. I think it would be a question of what kind of a plant it is, what kind of employment it is.

Mr. HYDE. I have named it specifically. I have named a specific plant.

Mr. FRANCE. Most workers at that plant do not know anything about what is going on, as I understand it, except the particular part or parcel of the job on which they are engaged.

Mr. HYDE. Mr. France, you are enough of a lawyer to know I have asked you a specific question. Can you give me an answer to that specific question?

Mr. FRANCE. I personally do not believe that a man should be removed from his job on the mere suspicion without any proof that he has done anything, on the mere suspicion, or, as you put it, reasonable ground. Who is determining the reasonable ground?

Mr. HYDE. Even though it is a facility of the nature I have mentioned?

Mr. FRANCE. Yes.

Mr. HYDE. We have to wait until something is done?

Mr. FRANCE. I think the man is entitled to his day in court. I do not believe people should be removed from their livelihood simply because someone says there is reasonable ground to believe they may constitute a danger.

Mr. HYDE. You think a man has a constitutional right to a job in a defense facility of the nature I have mentioned when there are reasonable grounds to believe that that individual is going to engage in sabotage?

Mr. FRANCE. No; I did not say that. The section says:

may engage in sabotage, espionage, or other subversive acts.

Mr. HYDE. Yes.

Mr. FRANCE. Now you get into something that is so vague. Is it a subversive act to join any one of the organizations on the Attorney General's list, for example? What do we mean by subversive act? I have never seen it defined.

Several of the Supreme Court Justices, I believe, have suggested that it is an extremely vague expression.

Now, if there were reasonable grounds properly determined with proper judicial safeguards that a man was going to indulge in espionage or sabotage, that would be one thing.

Mr. HYDE. You think there is a distinction between a job in a defense facility of the nature I have mentioned and a job in which you directly get a check from the United States Government?

Mr. FRANCE. I did not understand that, Congressman.

Mr. HYDE. Do you think there is a distinction between a job in a defense facility of the nature I have described and a job under the

Federal Government in which you get a check directly from Uncle Sam?

Mr. FRANCE. I think that the question that you have described, related to a particular type of plant, is limited beyond the limitations of this bill.

Mr. HYDE. Perhaps that may be so. Let us get right to that one type of facility. Suppose we could limit it to that. Would you then object to it?

Mr. FRANCE. I would object to it with this expression, "or other subversive acts," because I do not know what it means. I think a man could be put out of his job on false assumptions.

Mr. HYDE. You object to any attempt to protect ourselves in this way, for anything of this nature at all?

Mr. FRANCE. Oh, no. I do not object to the attempt by the proper authorities of the Government. The FBI should make every attempt. I think it has an extremely widespread machinery for protecting us against this sort of thing. But when you begin to classify whole groups of citizens, it seems to me you run the danger, Congressman——

Mr. HYDE. Do you think that the FBI first has to find the individual guilty of an overt act before we can protect ourselves?

Mr. FRANCE. No; I would not go that far.

Mr. HYDE. How far would you go?

Mr. FRANCE. I would say that if the FBI can present to a properly constituted body proof——

Mr. HYDE. What is a "properly constituted body"?

Mr. FRANCE. I would say a body which takes evidence under the rules of law under which a man has a right to defend himself. I think it becomes extremely dangerous when you put—this bill is not limited to merely what we ordinarily think of as defense facilities. Anything which can be considered to be in the interests of national defense is under it.

Mr. HYDE. We understand that. We would like to find out what it is you think we could use. We are interested in drafting proper legislation.

Mr. FRANCE. Yes.

Mr. HYDE. What do you think we could draft to protect ourselves from a situation such as we are confronted with here and against which we are trying to protect ourselves?

Mr. FRANCE. I think that in drafting such legislation you should be aware of the fact that this bill in a sense puts every worker in the country under supervision of a governmental department.

Mr. HYDE. Mr. France, has your organization drafted any suggested legislation to get at this difficulty we are confronted with here?

Mr. FRANCE. Well, my own opinion is, Congressman, that we have ample legislation on the books now to deal with espionage and sabotage.

Mr. HYDE. You do not think we need any new legislation?

Mr. FRANCE. I do not think you need to place all the workers of this country who may be said to be engaged in anything which is related to the national interest under this type of threat to their jobs.

Mr. HYDE. Which law is it that we have now which you think adequately protects us in this situation?

Mr. FRANCE. Well, we have laws dealing with espionage.

Mr. HYDE. What law is that? Which law?

Mr. FRANCE. Well, I cannot cite it offhand, Congressman, but I will be very glad to supply you with the citation of the law.

Mr. HYDE. Will your organization supply us with the laws we now have which you think adequately cover subversive activities in defense plants?

Mr. FRANCE. I would be very glad to do that.

(The information is as follows:)

SUPPLEMENTARY STATEMENT OF ROYAL W. FRANCE ON BEHALF OF THE NATIONAL LAWYERS GUILD IN OPPOSITION TO PROPOSED HOUSE JOINT RESOLUTION 528 TO LIQUIDATE COMMUNIST-INFILTRATED ORGANIZATIONS AND HOUSE JOINT RESOLUTION 527 TO PROVIDE PROTECTION OF DEFENSE FACILITIES

At the hearing on June 25, 1954, I was asked to furnish certain additional information, to wit:

1. The decision to which I referred in which it was held that a trade or profession is a property right.

2. A list of laws now in force protecting the Nation against espionage and sabotage.

3. What, if any, additional legislation the National Lawyers Guild would recommend for this purpose.

I therefore submit the following:

1. The decision to which I referred is *Washington Local Lodge* v. *International Brotherhood* (33 Wash. 2d 1, 70; 203 P. 2d, 1019, 1058–1059), where the Court citing numerous authorities, said:

"It would be well to remember * * * that a man has a right to be protected in his property * * *. For the same reason, the property of the merchant is his goods. And *every man's trade or profession is his property* * * *." (Emphasis supplied.)

In this connection, I call attention to *United States* v. *Lovett* (328 U. S. 303). As I pointed out in my statement regarding the decision by an equally divided court in *Bailey* v. *Richardson* (341 U. S. 918), that decision was limited to Government employment. For the Government to extend the long arm of authority into every industry and over every employer whom the Defense Secretary may designate would make the jobs of millions of workers dependent not upon their capacity nor on the doing of any wrongful act, but upon bureaucratic determinations.

2. Under existing law, persons may be punished by fine and imprisonment for treason (18 U. S. C. 2381), sabotage (18 U. S. C. 2151, 2156), insurrection (18 U. S. C. 2383), seditious conspiracy (18 U. S. C. 2384), advocating overthrow of the Government by force and violence (18 U. S. C. 2385). Also punishable by Federal law is misprision of treason (18 U. S. C. 2382), injuring Federal property or communications (18 U. S. C. 1361), conspiracy against the constitutional rights of citizens (18 U. S. C. 371), or conspiracy to impede discharge of Federal officers' duties (18 U. S. C. 372).

Finally, under the Internal Security Act of 1950 (whose constitutionality in this field is still to be tested) Communist-action oraganizations (as determined by the SACB) and their members must register and be subjected to numerous other forms of limitation. Under the emergency detention provisions of that act, persons found likely to commit sabotage or espionage may be detained, in time of proclaimed emergency following invasion or declaration of war, for the duration of the emergency. And to conspire "to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship" under foreign control is punishable by fine and imprisonment. Some of these acts should, in our opinion, be declared unconstitutional (for reasons equally applicable to the proposed bills) but under them, taken together, any area of "subversive activity" sought to be encompassed within House Joint Resolution 527 is already covered.

3. In the light of the foregoing measures, the National Lawyers Guild sees no need for further legislation such as that proposed. If any actual criminal act is done or attempted, the machinery of the Federal law enforcement agencies should be able to take care of the situation under existing law. In no event should people be subjected to punitive action for what someone thinks they might be likely to do some time in the future.

For some reason that was obscure to me, I was prevented from having the few minutes needed to conclude my testimony after having stepped aside on

the arrival of Congressman Eberharter. I merely wished to emphasize in conclusion the vagueness and the danger to fundamental freedoms inherent in such terms as "Communist-infiltrated," "the extent to which," "substantial domination," "substantial evidence," "promoting objectives," and "do not deviate from."

The "nondeviation" test is particularly obnoxious. Under House Joint Resolution 527 an organization may be found to be "Communist-infiltrated" because its policies "do not deviate" from those of Communist organizations. Such "nondeviation" need not be total nor is any consideration given to the legality or desirability of the objectives from which the organization does not deviate. It is well known that the Communist Party has many lawful and laudable objectives which are shared by people in religious, social service, peace, and other lawful organizations. Under the nondeviation test all such organizations, even though pursuing entirely lawful objectives, might fall under the ban if they opposed policies of the current administration.

In an article in the New York Sunday Times magazine for June 27, 1954, Hugh Gaitskell, former Chancelor of the Exchequer in Great Britain, makes an observation which Members of Congress might well ponder. He says:

"* * * we have been unable to understand the McCarthy anti-Communist spy mania which swept the United States in the last few years. *It seems to us so utterly alien to the tradition of an America founded by men who were fleeing from something very like this tyranny themselves.*

"We know, of course, that many excellent Americans are fighting this hysteria, and we are 100 percent with them. But we should like to see them get more support at the top in Washington." [*Emphasis* supplied.]

The National Lawyers Guild, itself an object of intolerant attack, will continue to fight for constitutional and democratic freedoms.

Mr. FRANCE. I would also like to point this out: The point we are making here is that you have a very broad statement about subversive acts. You have a very broad statement about what is essential to defense and if, for the sake of argument, some future Attorney General, let us say—not to make any criticism of the present one—should feel that a strike activity was sabotage, the whole effectiveness of labor organizations, their right to strike which has been upheld in the courts, could be termed under the provisions of this act sabotage or subversive.

So I have a feeling that this type of legislation undermines the rights guaranteed by the first and fifth amendments. It undermines the right of freedom of speech and the press and association far beyond anything we have done so far.

In this morning's New York Herald Tribune I read a statement by the Protestant Christian colleges, which is only one of many statements, which undoubtedly have come to the attention of you Members of Congress, to the effect that in trying to protect ourselves from communism we should not throw away the essential liberties for which we are fighting.

Mr. HYDE. We are just as interested in that, Mr. France, as you are. As a matter of fact, personally as an attorney before I was a Member of Congress I defended people who were fired because of alleged disloyal acts. So we are just as interested in protecting freedoms as you are.

Mr. FRANCE. Yes.

Mr. HYDE. But we would like to find out, if you do not think the language in these bills is adequate, what language your organization thinks is adequate; and if you do not think any language is necessary, what laws do you think cover the situation?

Mr. FRANCE. I shall be glad to submit additional memorandums, and appreciate the opportunity to do it, stating what laws we feel

now adequately protect what you Congressmen rightly have in mind. We are all aware of the fact that the Nation must defend itself.

Mr. GRAHAM. Mr. France, may I interrupt, please?

Remember, I told you that Mr. Eberharter would come in?

Mr. FRANCE. Yes.

Mr. GRAHAM. You have now consumed 40 minutes. In justice to the others we must give them a hearing this morning.

Mr. Eberharter, will you come forward now. We will be glad to hear you.

Mr. Eberharter, you know all the members of our committee: Mr. Hyde, of Maryland, Miss Thompson, and myself and Mr. Walter.

STATEMENT OF HON. HERMAN P. EBERHARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. EBERHARTER. I certainly recognize the chairman.

Mr. GRAHAM. Do you wish to have your statement incorporated in the record?

Mr. EBERHARTER. Please, Mr. Chairman.

Mr. GRAHAM. All right. At this point we will place in the record the statement of Herman P. Eberharter, a Member of Congress from Pennsylvania, one of our fellow Pennsylvanians.

Mr. EBERHARTER. Thank you, Mr. Chairman.

(The statement is as follows:)

Mr. Chairman, I have asked for a few minutes of your time because I am seriously concerned about the danger to our country presented by certain bills being considered in these hearings. I want to refer now, particularly, to two of these bills, namely, House Joint Resolution 527 and House Joint Resolution 528.

Indeed, gentlemen, to me it is very alarming that such bills could ever be presented to the Congress of the United States. I must say that within my memory and knowledge of the Congress, these two bills are amongst the most antidemocratic ever to be suggested for our consideration. It seems to me that in these times, and under present conditions, it behooves us to be particularly cautious that we do not follow the methods of the nations of Europe which suffered so much under dictatorships. We in this country must not ape the methods and practices of dictators and totalitarian countries, be they communistic, fascistic, or totalitarian in any form or name.

Yet, gentlemen, it seems to me that these two bills, if enacted into law, will move us far in the direction of doing just that. House Joint Resolution 528, which would empower the Subversive Activities Control Board to order any organization in the country to, in the words of the bill itself, "dissolve, liquidate, and wind up its affairs expeditiously," would, in my opinion, establish the legal framework for totalitarian government control of every facet of American life. This bill, if made the law of the land, would place in the hands of a single individual, the Attorney General, and a small, politically appointed, administrative agency, the partisan power of life or death over any organization, whether it be a union, a business, a church, or a fraternal or civil organization.

Gentlemen, in the words of the Louisville (Ky.) Courier-Journal, this proposed legislation "is as startling as any bomb" (editorial, May 12, 1954). This editorial, which, by the way, I recommend to your attention, points out, in reference to House Joint Resolution 528, that, "Ordinarily, such an idea would speak for itself. Its danger for oppression and destruction, both actual and moral, ought to be as plain as the nose on a face." I am convinced, gentlemen, that the "danger for oppression and destruction" in this proposed legislation is subversive of the entire structure of our democratic way of life.

Just as House Joint Resolution 528 is destructive in its impact on American organizations, so House Joint Resolution 527 is destructive of the ability of Americans to make a livelihood. This bill would place in the hands of an administrative agency the totalitarian power of government to set up a blacklist

prescribing the right of large numbers of Americans to work in vast areas of our economy.

Gentlemen, on the basis of these simple, fundamental aspects alone there can be no doubt that these two bills should not even be permitted to go beyond the consideration of this committee. In addition, however, I must bring to your attention the insidious nature of the kinds of standards and criteria which are used in these two bills to determine which organizations shall be destroyed and which individuals shall be blacklisted and kept from making a living. The criteria I have in mind are those listed in House Joint Resolution 528, in section 2 (d) on pages 5 and 6, and, in House Joint Resolution 527, those implicit in the phase (lines 10–12, p. 2) "individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts."

These standards, I submit, are so vague and all-inclusive, so sweeping, that they have no limits at all. Our experience in the past 20 years has amply demonstrated that these words as currently used do not specifically define anything, and that they are in fact nothing more than epithets of disapproval. The nature of these standards can best be described in the words of Mr. Justice Douglas:

"Does it mean an organization with Socialist ideas? There are some who lump Socialists and Communists together. Does it mean an organization that thinks the lot of some peasants has been improved under Soviet auspices? Does it include an organization that is against the action of the United Nations in Korea? Does it embrace a group which on some issues of international policy aline itself with the Soviet viewpoint? Does it mean a group which has unwittingly become the tool for Soviet propaganda? Does it mean one into whose membership some Communists have infiltrated? Or does it describe only an organization which under the guise of honorable activities serves as a front for Communist activities?

"The charge is flexible; it will mean one thing to one officer, another to someone else. It will be given meaning according to the predilections of the prosecutor: Subversive to some will be synonymous with radical; subversive to others will be synonymous with Communist. It can be expanded to include those who depart from the orthodox party line—to those whose words and actions (though completely loyal) do not conform to the orthodox view on foreign or domestic policy. These flexible standards, which vary with the mood or political philosophy of the prosecutor, are weapons which can be made as sharp or as blunt as the occasion requires. Since they are subject to grave abuse, they have no place in our system of law. When we employ them, we plant within our body politic the virus of the totalitarian ideology which we oppose."

Indeed, gentlemen, the conclusion is unavoidable that we can shortly look forward to the time when the Democratic Party and half of the Republican Party are added to the subversive list and slated for dissolution because they fail to avoid the sweeping nature of the criteria of these bills. This is certainly no exaggeration in times when the charge of "20 years of treason" can be placed on the Democratic Party by many individuals in position of great influence in this country.

I believe, of course, that there can be no question but that acts of sabotage and espionage must be dealt with severely. We have laws on our books which deal with criminal subversive acts. We have laws dealing with the overthrow by violence of the United States Government. We have laws dealing with foreign agents, and with acts of sabotage and espionage. The Attorney General has only to prove his case in a court of law before a jury of American citizens to get whatever action is necessary.

But these bills are deliberately designed to get around the requirements of proof that unlawful acts of criminal conduct have been committed. These bills would destroy organizations and blacklist individuals on the basis of outlawing ideas and the free expression of ideas, and not on criminal acts. I can come to no other conclusion with respect to the nature of the criteria and standards written into these two bills.

In conclusion, Mr. Chairman, and members of the committee, I want to remind you that legislation of this general type has won, for good reason, the unanimous opposition of every labor union in the country. This includes all of our most conservative unions, whose strongly anti-Communist positions and actions are well known to the Members of Congress and to the public generally. In spite of this record, this kind of legislation has been universally labeled "union-busting." I must agree completely with the words of AFL President George Meany, who, in reference to the Goldwater bill (S. 1254) (a bill very similar to H. J. Res. 528),

said, before the Senate Labor Committee last year, "What it adds up to is a Government board licensing unions." Similarly, I agree with the words of CIO Vice President Joseph Beirne, in reference to S. 1606 (a bill of like nature): "* * * the great body of workers would be deprived of their constitutional right to bargain collectively for their best interests."

It is my considered opinion, Mr. Chairman, that the unanimous opinion of our democratic labor unions cannot be taken lightly.

It is my sincere hope that this committee will adopt the views I have expressed on House Joint Resolution 527 and House Joint Resolution 528. I urge you to reject these bills and thereby overcome an effort to destroy the democratic fabric of our society.

Mr. EBERHARTER. Mr. Chairman, I have asked for a few minutes of your time because I am seriously concerned about the danger to our country presented by certain bills being considered in these hearings. I want to refer now particularly to two of these bills; namely, House Joint Resolution 527 and House Joint Resolution 528.

To me it is very alarming that such bills could ever be presented to the Congress of the United States. I must say that within my memory and knowledge of the Congress these two bills are amongst the most antidemocratic ever to be suggested for our consideration. It seems to me that in these times and under present conditions it behooves us to be particularly cautious that we do not follow the methods of the nations of Europe which suffered so much under dictatorships. We in this country must not ape the methods and practices of dictators and totalitarian countries, be they communistic, fascistic, or totalitarian in any form or name.

It seems to me that these two bills, if enacted into law, will move us far in the direction of doing just that. House Joint Resolution 528, which would empower the Subversive Activities Control Board to order any organization in the country to, in the words of the bill itself, "dissolve, liquidate, and wind up its affairs expeditiously" would, in my opinion, establish the legal framework for totalitarian government control of every facet of American life.

Mr. WALTER. Yes; but Mr. Eberharter, that does not apply to all organizations. That applies only to certain types of organizations. I will concede that this language is rather loose, but it seems to me this does not apply to any organization.

Mr. EBERHARTER. In the language of the measure, in my opinion——

Mr. WALTER. You have just taken that out of context. What you say just is not the fact.

Mr. EBERHARTER. It would apply to any organization of whatever nature if the Attorney General would find there is reason to believe that certain organizations are guilty or would be guilty of subversive activities.

Mr. WALTER. It is not "reasonable to believe," it is more than that. Of course, the decision would have to be based on substantial evidence. That is the rule laid down in the Consolidated Edison case. It does not mean a mere scintilla of evidence; it means substantial evidence.

Mr. EBERHARTER. When you get before a court, Mr. Walter, and the term "substantial evidence" is presented to the court of appeals or the court of first jurisdiction, if there are any facts presented at all which might substantiate the charges the court will not go beyond the facts presented unless it can be shown that it is arbitrary or capricious.

Mr. WALTER. No. No.

Mr. EBERHARTER. In my opinion.

Mr. WALTER. What the Supreme Court held in the Consolidated Edison against the National Labor Relations Board case was not that. Go ahead; excuse me.

Mr. EBERHARTER. I might say, Mr. Walter, in taking the matter to court of course in the meantime perhaps a year or 2 years would elapse before the issue is presented to the Court. And in the meantime irreparable harm might be done to any organization which was proscribed by the Attorney General.

This bill, referring to House Joint Resolution 528, if made the law of the land, would place in the hands of a single individual, the Attorney General, and a small politically appointed administrative agency, the partisan power of life or death over any organization, whether it be a union, a business, a church, or a fraternal or civic organization.

Mr. GRAHAM. Mr. Eberharter, we went through this very section you are dealing with now with the former witness.

Mr. HYDE. Mr .Eberharter, what board or court do we have that is not politically appointed?

Mr. EBERHARTER. Well, I assume that we can say that the Supreme Court of the United States is politically appointed, to some extent.

Mr. HYDE. To some extent?

Mr. EBERHARTER. Political considerations perhaps enter into it but yet, Mr. Hyde, we always have looked up to the courts as the bulwark against injustice, one of the strongest perils of our form of government.

Mr. HYDE. That is right. All boards and courts are politically appointed, are they not?

Mr. EBERHARTER. Yes; but I think we can assume from history——

Mr. HYDE. We cannot get around that, can we, if we are going to have any kind of court system?

Mr. EBERHARTER. I think we can assume from the history of the country, the history of the courts of the United States and of the State courts, and the history of our administrative boards, that we look for even-tempered justice more confidently to the courts, to the judicial branch of the Government. That is why this committee has been so careful, in my opinion, in all instances to always give to the courts the right of review.

Even though you may say that every commission, every board, and every court is politically appointed, I think they can be considered in a little different category.

Mr. WALTER. Yes, but, Mr. Eberharter, I call your attention to the language on pages 10 and 11 of 528, giving the court jurisdiction to review and requiring the entire record, all of the testimony adduced at the hearing before the board, to be submitted to the court; which, in my opinion, means that the finding of the Board has no more effect than has the finding of a chancellor in equity in the courts of our State.

Mr. HYDE. Almost an action de novo?

Mr. WALTER. It is almost an action de novo. In other words, it is submitted for decision of the circuit court, as would be the case if a case in the district court were submitted on affidavits.

Mr. EBERHARTER. Mr. Walter, in answer to that, even though the case is heard de novo we know as a matter of practice before a case

can come before the court for adjudication after it has gone through these boards and these hearings it may be a year or two. In the meantime all of the force and effect of the action by the Board is working against either the individual or the organization who has been proscribed by the single politically appointed Attorney General.

Mr. WALTER. I will concede that, but in the meantime these same officials are functioning. There is no disturbance of the internal organization. The entire organization is in status quo, and it is not until this final determination by the court that the order removing certain people is carried out. The only ill effects, as I see it, are the same that come to an organization today under existing laws.

Today when the organization of which the preceding witness is a member and active in was put on a proscribed list because it is a Communist front organization, then all the harm that could be done to that organization was done just through the listing of the Attorney General. This law does not increase the onus placed upon any organization.

Mr. EBERHARTER. Of course, Mr. Walter, you are going on the basis, perhaps, that I am approving of the actions already instituted under Mr. Brownell, but I certainly am not doing so. I do not want to use him or the action that have been taken up to now as being——

Mr. WALTER. It was not Mr. Brownell; it was Francis Biddle, as I recall it.

Mr. EBERHARTER. As being approved. If this committee would have before it a report of the individuals against whom the Attorney General has taken action, in effect proscribing, which are of more than 6 or 8 months or even a year's duration, without any decision—and these individuals are still suffering today from the action of the Attorney General—you would find, I think, that there are many, many more than you have any idea of. I know of some instances myself personally where attempts have been made to get a decision for over a year, and it is nothing but a matter of procrastination. In the meantime the individuals are suffering intensely.

So I just do not want to be put in the position of approving of the actions already taken or the practices that we have been following up to now.

Mr. GRAHAM. Go ahead, Mr. Eberharter.

Mr. EBERHARTER. Now, Mr. Chairman, I would like to refer to an editorial which occurred in the Louisville (Ky.) Courier Journal, which said:

> Ordinarily, such an idea—

as embodied in House Joint Resolution 528—

> would speak for itself. Its danger for oppression and destruction, both actual and moral, ought to be as plain as the nose on a face.

Mr. Chairman, I can personally testify to the fact that that is the truth in the cases of some individuals whose cases have been brought to my attention.

I am convinced, therefore, that the danger for oppression and destruction in this proposed legislation is subversive of the entire structure of our democratic way of life.

Just as House Joint Resolution 528 is destructive in its impact on American organizations, so House Joint Resolution 527 is destructive

of the ability of Americans to make a livelihood. This bill would place in the hands of an administrative agency the totalitarian power of Government to set up a blacklist proscribing the right of large numbers of Americans to work in vast areas of our economy.

On the basis of these simple, fundamental aspects alone there can be no doubt that these two bills should not even be permitted to go beyond the consideration of this committee. In addition, I must bring to your attention the insidious nature of the kinds of standards and criteria which are used in these two bills to determine the organizations which shall be destroyed and which individuals shall be blacklisted and kept from making a living. The criteria I have in mind are those listed in House Joint Resolution 528, in section 2 (d) on pages 5 and 6, and in House Joint Resolution 527, those implicit in the phrase, lines 10 to 12, page 2—

individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts.

Mr. HYDE. Mr. Chairman?

Mr. Eberharter, right there in line with the help I was trying to get from the previous witness, is there anything you think this country can or should do about persons employed in defense plants concerning whom there is reasonable ground to believe they may engage in sabotage and espionage?

Mr. EBERHARTER. Well, Mr. Hyde, in that connection I would say the executive branch of the Government having its authorized agencies could certainly deal with and make representations to the companies that are under contract with the Federal Government. I am certain that there would be complete cooperation between any company in the United States having a Government contract and the Government, as to the making of either defense materials or any other kind of materials.

Mr. HYDE. Do I understand, then, by that that you are suggesting if the employer is advised by a Government official that there is an individual in that employer's plant about whom reasonable grounds exist to believe he may engage in sabotage, espionage, or other subversive acts, then you feel that that employer should fire that employee?

Mr. EBERHARTER. I think the employer would, without any doubt whatsoever——

Mr. WALTER. Without a hearing?

Mr. EBERHARTER. I was going to say, Mr. Walter: Without any doubt whatsoever take into consideration the recommendations of any proper representative of the Government and take whatever action would be for the best interests of the United States. I have that much confidence in every person.

Mr. HYDE. Who would decide that?

Mr. EBERHARTER. Every company that has any contract with the United States.

Mr. HYDE. Who would decide what was in the best interests of the United States in the case you suggest?

Mr. EBERHARTER. The contract is between the employer and the employee. Certainly the employer would have the absolute right to discharge any employee for just cause, notwithstanding the National Labor Relations Act. For just cause. I am certain that would be considered just cause.

Mr. HYDE. Then if the employer receiving that information, let us say, from the Attorney General or some other duly constituted Federal official, should ask that, as I understand it you are saying it would be all right for the employer upon his own initiative and the information and belief based upon this information he got from the Government to fire that employee? That would be all right, then?

Mr. EBERHARTER. After proper consideration.

Mr. HYDE. What is "proper consideration?"

Mr. EBERHARTER. Of course, that would all come under the right of an employer, circumscribed by the National Labor Relations Board. The employer, having just cause, can discharge an employee.

Certainly, if an employee is told the reasons why he is being discharged—the employer I think in every instance would confront him with what information he has, and the employee would have an opportunity to defend himself.

Mr. HYDE. How?

Mr. EBERHARTER. It seems to me that would be much better.

Mr. HYDE. How would the employee have an opportunity to defend himself under those circumstances?

Mr. EBERHARTER. He would be faced with the charges and could combat them.

Mr. HYDE. How?

Mr. EBERHARTER. In a proper method; either by going to court and getting an injunction against his discharge or by suing for his wages.

Mr. HYDE. Under what grounds could he get an injunction against his discharge under those circumstances?

Mr. EBERHARTER. Under the terms of the National Labor Relations Act.

Mr. HYDE. As I understand it, you would substitute the National Labor Relations Board as the arbiter for such findings, rather than some other board?

Mr. EBERHARTER. No. You see, what you are trying to do by this act is have the Attorney General given the power to proscribe perhaps hundreds or even thousands of individuals in one finding from their right to employment.

Mr. HYDE. As I understand it, Mr. Eberharter, from what we have gotten at so far, you think that a person concerning whom there are reasonable grounds to believe may engage in sabotage or espionage should not be employed in a defense facility?

Mr. EBERHARTER. If there are grounds—reasonable grounds; I would use that word, too—for believing there is danger of espionage or sabotage against the United States, I think the employer would have a perfect right to discharge that employee.

Mr. WALTER. Would that not require an amendment to the National Labor Relations Act?

Mr. EBERHARTER. No. I do not know, Mr. Walter, whether it would or not.

Mr. WALTER. You said thousands of individuals would lose their employment because of a finding as to one person; is that it?

Mr. EBERHARTER. Yes.

Mr. WALTER. That is not what the bill you are talking about, 527, provides. You see, that relates to individuals "as to whom there is reasonable ground to believe."

I will admit very frankly, and I am sure all the other members of the subcommittee will, we are not happy with this language and certainly would not let it go out without change, but this relates only to individuals. This is the power of the Attorney General to find that A, B, and C are sitting outside of the plant at Schenectady counting the number of cars loaded with war materials leaving the plant. They do not know why these people would be interested, but that would give rise to a suspicion, reasonable grounds to believe that that was not proper and not in the best interests of the United States. But when the finding was made as to those three men and they were discharged, certainly it would not affect anybody else.

Mr. EBERHARTER. On the other hand, Mr. Walter, if the Attorney General would proscribe any organization, be it a union organization or organized labor organization, every member thereof would be affected.

Mr. WALTER. But that is not what 527 says. If you look at page 2 and start at line 10 and reexamine it you will find I am correct. Measures can be instituted in order to deny access to individuals. That is the whole story.

Mr. EBERHARTER. Yes. Well, if a member of an organized labor unit, a particular unit is involved, and if that unit has been proscribed by the Attorney General's list, it would in effect blacklist every member who kept his membership in that organization.

Mr. WALTER. Well, there we are not in agreement.

Go ahead, Mr. Eberharter.

Mr. EBERHARTER. The standards, I submit, are so vague and all inclusive, so sweeping, that they have no limits at all. Our experience in the past 20 years has amply demonstrated that these words as currently used do not specifically define anything, and that they are, in fact, nothing more than epithets of disapproval.

The nature of these standards can best be described in the words of Mr. Justice Douglas:

> Does it mean an organization with Socialist ideas? There are some who lump Socialists and Communists together. Does it mean an organization that thinks the lot of some peasants has been improved under Soviet auspices? Does it include an organization that is against the action of the United Nations in Korea? Does it embrace a group which on some issues of international policy alines itself with the Soviet viewpoint? Does it mean a group which has unwittingly become the tool for Soviet propaganda? Does it mean one into whose membership some Communists have infiltrated? Or does it describe only an organization which under the guise of honorable activities serves as a front for Communist activities?
>
> Tho charge is flexible; it will means one thing to one officer, another to someone else.

Mr. HYDE. Excuse me, Mr. Eberharter. What language is Justice Douglas talking about there?

Mr. EBERHARTER. The language when you say "subversive activities"—"subversive acts."

He said:

> The charge is flexible; it will mean one thing to one officer, another to someone else. It will be given meaning according to the predilections of the prosecutor: Subversive to some will be synonymous with radical; subversive to others will be synonymous with Communist. It can be expanded to include those who depart from the orthodox party line—to those whose words and actions (though completely loyal) do not conform to the orthodox view on foreign or domestic policy. These flexible standards, which vary with the mood or political

philosophy of the prosecutor, are weapons which can be made as sharp or as blunt as the occasion requires. Since they are subject to grave abuse, they have no place in our system of law. When we employ them we plant within our body politic the virus of the totalitarian ideology which we oppose.

That is the end of the quotation.

Mr. WALTER. What is that from; do you know?

Mr. GRAHAM. Do you know the case, Mr. Eberharter?

Mr. EBERHARTER. I do not have that, but I will supply that for the committee.

Mr. GRAHAM. All right.

Mr. EBERHARTER. I neglected to state exactly where that came from. (The information is as follows:)

Anti-Fascist Committee v. *McGrath*, 341 U. S. 123, 176.

Mr. EBERHARTER. The conclusion is unavoidable that we can shortly look forward to the time when a political party can be added to the subversive list and slated for dissolution because they failed to avoid the sweeping nature of the criteria of these bills. This is certainly no exaggeration in times when the charge of "20 years of treason" can be placed on the Democratic Party by many individuals in positions of great influence in this country.

Mr. WALTER. I think at that point we ought to turn to the criteria and see whether we can set up more definite language. What language is it you are complaining of?

Mr. EBERHARTER. Well, the language in the act.

Mr. WALTER. Which act?

Mr. EBERHARTER. That is in lines 10 and 12, House Joint Resolution 527, page 2—

individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts.

Mr. WALTER. Do you not think that the "reasonable ground" has a very definite meaning? Are those not words of art that have been defined frequently? Does that not mean a conclusion based on a set of facts, which would prevent a reasonably prudent person from arriving at any other conclusion? Is that what it means?

Mr. EBERHARTER. Well, Mr. Walter, the term "reasonable ground" is a legal term, I suppose, in some respects, but when you want to give to one individual in this country the right to do irreparable harm to organizations or to individuals simply on his own personal reasons that there may be reasonable grounds, I think we are going too far.

Mr. WALTER. We are talking about two different things, because neither of these measures gives to one individual that much power. That is more power than any man should want to have, and certainly more power than this Congress has ever given to anybody.

Mr. EBERHARTER. Well, Mr. Walter, under recent practices do you not know in many cases individuals have been proscribed from continuing in their employment, even under the acts already on the statute books?

Mr. WALTER. Not enough.

Mr. EBERHARTER. Not enough?

Mr. WALTER. Unfortunately, there are not enough.

Mr. EBERHARTER. You do not think that is too much—pardon me; I do not mean to ask any member of the committee any question.

Mr. WALTER. I have already said that. I do not know of any law——

Mr. EBERHARTER. I am not in a position to argue.

Mr. WALTER. Wait a minute. I do not know of any law on the statute books or proposed that gives to any individual the kind of life-and-death authority you are talking about. If there is anything in this law I want you to show it to me.

Mr. EBERHARTER. I can definitely show you that; not right now.

Mr. WALTER. No individual makes the finding you are talking about. The finding is made by a board.

Mr. EBERHARTER. And in the meantime——

Mr. WALTER. The finding of the board is not conclusive. It depends on the finding of the court. The finding of the court of original jurisdiction is not conclusive. It depends on the finding of the circuit court of appeals, and then the Supreme Court of the United States. So this follows all of our concepts of Anglo-Saxon jurisdiction and jurisprudence.

Mr. EBERHARTER. In the meantime, in the 4 intervening years, perhaps, until the case is decided by the court, irreparable damage is being done to the person against whom the Attorney General acted.

Mr. WALTER. Now, where has such a thing happened?

Mr. EBERHARTER. I beg your pardon, Mr. Chairman?

Mr. WALTER. When has such a thing happened, that you are talking about?

Mr. GRAHAM. The 4 intervening years?

Mr. EBERHARTER. I can cite to you off the record a few cases.

Mr. GRAHAM. In the State courts or the Federal courts?

Mr. EBERHARTER. The case has not yet gone to court. We cannot get a decision from either the Board or the administrative officer.

Mr. WALTER. Then this is the case of a Federal employee who has been suspended because charges of disloyalty have been made. Is that the type of case?

Mr. EBERHARTER. The charges have not been actually disloyalty. In one instance it was a Government employee relieved of his employment, and in the other instance it was an individual who was prevented from getting employment in a defense plant.

Mr. HYDE. Prevented from getting it?

Mr. EBERHARTER. Oh, yes.

Mr. HYDE. Under existing law?

Mr. EBERHARTER. Under existing law.

Mr. WALTER. Where is there anything in these acts that would go beyond the existing law in that respect?

Mr. EBERHARTER. I am not prepared to present that right now, Mr. Walter, but I will present it to the committee if the administrative officer can show that he is acting under law. If he is not acting under law then it is a case which I assume the Judiciary Committee under its power of investigation should find out about.

Mr. GRAHAM. You will submit a supplemental brief, then, do I understand?

Mr. EBERHARTER. I will submit, Mr. Chairman, for the information of the committee, that brief, but not for purposes of publication, as to the two cases which I mentioned to you.

Mr. GRAHAM. So that there will be no confusion or question of breaking of faith, if you submitted it for the record it would become public.

Mr. EBERHARTER. I will submit it for the private information of members of the committee, Mr. Chairman. Already in these two cases irreparable damage has been done. Only more damage would be done if these cases were publicized.

Mr. GRAHAM. You fear repercussions on your clients?

Mr. EBERHARTER. Not clients, Mr. Chairman.

Mr. GRAHAM. All right. Go ahead.

Mr. EBERHARTER. I would be very pleased if the committee would determine whether the Attorney General is acting in his authority under the law.

Mr. Chairman, it is my considered opinion that the unanimous opinion of our democratic labor unions, who are against the provisions of these two resolutions, cannot be taken lightly. It is my hope that this committee will adopt the views I have expressed here. I urge you to reject these bills because I think they are in a direction of destroying the democratic fabric of our society.

Mr. GRAHAM. Are there any further questions, Mr. Hyde?

Mr. HYDE. Just one further question.

Mr. Eberharter, I have had representatives of unions tell me that one of the objections they had to this legislation, particularly 528, is that they feel that the unions themselves should be the ones who would police their own organizations with respect to Communist infiltration and Communist members. In other words, they should be the ones to decide whether or not a person is a Communist and therefore dangerous to have in a defense plant.

Do you think that the decision by the executive body or whatever body it would be in the union which would make that decision would be preferable and would be less likely to deprive someone of his constitutional right to a job than a decision by a board so set up under this bill?

Mr. EBERHARTER. The only thing I can say in that respect is that the experience up to now proves that the unions have done a magnificient job in that regard, while in my opinion the administrative department in its performance of the functions that have been assigned to it legislatively has not done a good job at all.

Mr. HYDE. Conceding for the moment——

Mr. EBERHARTER. That is all we can speak of, Mr. Hyde—the experience we have had up to now.

Mr. HYDE. Yes, but we are getting to a further look at this thing. Conceding for a moment, without admitting—I want to be very careful about that—your conclusion about what has been done so far may be correct, do you think that an individual's constitutional right, if any—and it has been testified here that he does have a constitutional right—to a job, or whatever right he has to a job, whether it be constitutional or otherwise, is better protected by a decision of an executive body of the labor union, for example, or some other private organization, than the decision by a duly constituted board of the Federal Government?

Mr. EBERHARTER. Well, in the first place there your premise that every individual has a constitutional right to a job, of course, is certainly circumscribed by the right of contract between the employer and the employee. In those contracts of employment, certainly they can set forth whether or not the employee is entitled to his position

for a certain length of time, provided he complies with the requirements of the position and all that.

Mr. HYDE. I said, Mr. Eberharter, whether it be a constitutional right or some other right.

Mr. EBERHARTER. Oh.

Mr. HYDE. Do you think that that right is better protected by such a privately constituted board, let us say, than it would be by a federally constituted board?

Mr. EBERHARTER. Well, I definitely think so, because you are attempting to give in these two resolutions very, very much too great a power.

Mr. HYDE. What power is it?

Mr. EBERHARTER. The power of proscribing the right of an individual to the pursuit of happiness.

Mr. HYDE. Do you think it would be preferable to give that power to a privately constituted board from which there is no right of appeal to a court?

Mr. EBERHARTER. I would for the time being. I would because of the experience we have had up to now.

The present feeling throughout the country is one of fear and suspicion of perhaps millions of individuals in every walk of life. The climate under which we are operating in this country creates chaos.

Mr. HYDE. I am inclined to agree with you, Mr. Eberharter, that a good deal of fear may be due to a lack of understanding of what it is the Government is trying to get at. I think that lack of understanding is due, in a great measure, to a lot of misinformation that has been put out by persons who have been fighting the efforts to get at subversive activities.

Mr. EBERHARTER. Do you not think—well, I should not ask questions; I appreciate that. But in my opinion we are trying to remedy the situation by giving too much power to the administrative branch of the Government in finding and in acting in a way which deprives individuals and organizations of fundamental rights guaranteed by the Constitution.

Mr. HYDE. I know, Mr. Eberharter, but you would give that power to a privately constituted board with no right of appeal.

Mr. EBERHARTER. Certainly an employee deprived of his position with an employer would have redress in the courts.

Mr. GRAHAM. Mr. Walter, do you have any questions?

Mr. WALTER. Mr. Eberharter, what we are concerned about and what the country is concerned about, and much of the fear you mention, comes from the appreciation of people like David Greenglass, an organizer for the UE union. How do you lift a man like that out of the union, assuming that the union will not do it itself?

Mr. EBERHARTER. My answer, Mr. Walter, is that we do not want to deprive American citizens generally of the rights guaranteed under the Constitution because of 1 or 2 bad cases. Certainly I do not want to be put in a position right here of defending any of these persons who have been subversive or who have agitated on behalf of the Communist cause.

Of course there are many people right now following the line of the Communist cause by opposing action in Indochina. Of course it is doubtful in my mind if a majority of the people of the country

are not following the Communist line in that particular instance, opposing action in Indochina.

Mr. WALTER. That is absolutely correct. We do not want to do anything that will provide a cure worse than the disease. On the other hand, there is something that has to be dealt with. I hoped that you had some ideas along those lines.

In your statement you state—

> These bills would destroy organizations and blacklist individuals on the basis of outlawing ideas.

What do you mean by that?

Mr. EBERHARTER. Exactly what I said a second ago when I said that a person would have an individual opinion with respect to any action, for instance, by the duly constituted executive departments of the Government. If he did not believe in the policy they were pursuing and you inveighed against it, he could be construed as being dangerous.

Mr. WALTER. Because you did not agree with the policies of the administration, then that fact would be construed as meaning that you were a Communist?

Mr. EBERHARTER. It could be under the language of the bills.

Mr. GRAHAM. Miss Thompson, any questions you wish to ask?

Miss THOMPSON. I wondered who would appoint such a board if there was not a Government or quasi-Government board set up to take care of that.

Mr. EBERHARTER. Miss Thompson, in the first place I do not think there is any necessity for a board of that nature in the administrative branch of the Government. I think the way the executive is set up now, with its departments authorized to make the necessary investigations, bring actions under the present laws, it is unnecessary to set up an additional board.

Miss THOMPSON. Do you think the individuals themselves should do it, I understood you to say?

Mr. EBERHARTER. I think, Miss Thompson, the Federal Bureau of Investigation under the Department of Justice is pretty well able to take care of the situation, and will do a better job perhaps than a new board set up.

Mr. GRAHAM. Thank you, Mr. Eberharter. Is the representative of the American Commuications Association present?

Will you give us your name, please?

Mr. SELLY. My name is Joseph P. Selly. I am president of the American Communications Association, an independent union representing workers in the communications industry.

Mr. RABINOWITZ. I am Victor Rabinowitz, and I am counsel for the union, and the testimony of the union will be divided in that Mr. Selly will discuss some of the policy, and as an attorney I would like to discuss some of the legal problems that I think have been raised here.

STATEMENT OF JOSEPH P. SELLY, PRESIDENT, AMERICAN COMMUNICATIONS ASSOCIATION

Mr. SELLY. On behalf of the American Communications Association, I appear to testify to record the opposition of the memberbership of my union to House Joint Resolution 527 and House Joint Resolution

528, and any similar legislation which may be considered by this committee.

On March 3, 1954, my union testified before the subcommittee of the Senate Judiciary Committee in opposition to the Butler bill, S. 1606, the Goldwater bill, S. 1254, and the McCarran bill, S. 23.

I will seek to prove that all of the bills mentioned above, including House Joint Resolution 527 and House Joint Resolution 528 have certain dangers and objectionable features in common; that they are undemocratic, inequitable, antilabor, unconstitutional, and employer inspired. I will further seek to prove that they have nothing in common with a genuine effort to protect the national interests of our country.

It is interesting to examine why there is this sudden spate of antilabor legislation. We see this—and I say "We," I mean the members of my union—as a concerted effort by big business to cripple and render impotent the organized labor movement so as to permit them a free hand in carrying out their plans for increased profits through speedup; wage cuts, and generally worsened conditions of work.

All the organs of big business such as, for example, the Wall Street Journal, the Journal of Commerce, United States News and World Report and similar periodicals, have been urging that this is a propitious time for big business to recapture the positions which they had lost as a result of the organizing of millions of American workers in the period of the New Deal.

Mr. HYDE. Mr. Selly, at that point, are you acquainted with the Wall Street Journal's editorial in opposition to 527 and 528?

Mr. SELLY. I am. I would say that every once in a while the Wall Street Journal steps outside of its role and says something which is not antilabor.

These organs of big business point out that Congress is in a receptive mood to put the shackles on labor and to permit the employers to weather the predicted recession by fastening the burden on the backs of the American workers.

But this can only be done if the unions are weakened, which explains the great number, the unprecedented ferocity, and the harsh inequities of the antilabor legislative proposals which have descended in a flood upon the labor movement.

While big business and its representatives in Congress speak publicly of a rolling readjustment and characterize those who warn of the dangers of a recession as prophets of doom and gloom, privately these same gentlemen recognize the 10-percent drop in industrial production, the sharp drop in farmers' incomes, the glutted market for automobiles, and the curtailment of steel production as dangerous portents of an economic crisis.

Mr. HYDE. Mr. Selly, does this have something to do with this bill? When do we get down to the bill? You are making a speech on what causes the economic difficulties.

Mr. SELLY. If you will permit me, Congressman, I think it has everything to do with this bill, because I think that we have to examine the origin and the thinking, the causes, to which this committee is presumably addressing itself to understand the legislation.

Mr. HYDE. Do you think big business is trying to cause bad business?

Mr. SELLY. Yes; I think they are. I think they are.

Mr. WALTER. By what vote was your union expelled from the CIO?

Mr. SELLY. I do not see the relevance of that question, Mr. Chairman.

Mr. WALTER. It was 35 to 2, was it not?

Mr. SELLY. Well, you seem to be pretty well acquainted with it.

Mr. HYDE. I submit it is just as relevant as what you have said so far, as far as these bills are concerned.

Mr. SELLY. I do not know who is going to judge the relevancy.

Mr. GRAHAM. Proceed. Go ahead.

Mr. SELLY. These big-business spokesmen are determined that that crisis shall be a profitable one for them, if a costly one for the average American. They are quite comfortable with a pool of unemployed amounting to 4½ or 5 million, since that means an easy labor market and competition for cheap wages.

But it also means a curtailment of the purchasing power of the American people, a cut in their living standards, and a threat to the economy of the Nation. It is to prevent such catastrophic developments that we oppose the bills currently before this committee which would shackle the labor movement and prevent organized labor from making its contribution to a free, prosperous economy.

House Joint Resolution 528 is antilabor and undemocratic because:

1. It limits the right of members of a trade union to choose their own officers free from Government interference or coercion. Any legislation that interferes with this fundamental right is undemocratic and un-American. It would be intolerable if members of the National Association of Manufacturers or the United States Chamber of Commerce were to be deprived of the right to choose their own officers without limitations imposed by the Government; it is equally intolerable that American workers, members of trade unions, should be told that the Government imposes limitations on their democratic right to choose their own officers.

Mr. HYDE. Mr. Selly, how does 528 apply to labor organizations more than it does to organizations of the National Association of Manufacturers or the United States Chamber of Commerce type?

Mr. SELLY. While it ostensibly applies to both, we have a faint suspicion it will be mainly aimed at labor.

Mr. HYDE. I know, Mr. Selly, but we are talking about the language of the bill.

Mr. SELLY. The language of the bill is universal in its application.

Mr. HYDE. Then if that is true, this statement that you have just made is not accurate.

Mr. SELLY. Oh, yes, it is accurate. I say it would be intolerable in either case. I am opposed to the Government of the United States interfering with the Chamber of Commerce in their choice of their officers, just as I am opposed to them interfering with my union members in their choice. I say it is equally intolerable.

Such Government interference in the rights of trade unionists was a basic characteristic in Nazi Germany. It has no place in a democratic society and its introduction is an insult to the intelligence and patriotism of American workers.

2. The proposed legislation limits the right of a union to adopt policies which are not approved by the administration currently in power.

This again is clearly antilabor and undemocratic. If we are to maintain a free labor movement, the members of any union must retain the right to determine their own policies free from interference from any outside agency, including the Government. The basic evil in the bill lies not only in the fact that particular individuals in the Government are given the arbitrary power to decide whether policies adopted by the union are permissible; it lies in the fact that no individual in Government, whether sympathetic or unsympathetic to labor, should be given this power. There is no substitute for the democratic right of union members to determine their own policies.

3. The bill confers on the Government the right to investigate unions and to harass them in the conduct of their business if the Government does not approve their policies. The private affairs of unions, their strategy meetings, policy discussions, collective bargaining strategy and strike tactics all would become fields for investigation and snooping by agents of the SACB or the Attorney General. Employers would resume the use of labor spies for the purpose of provocations to justify actions by the Attorney General against the union.

4. The bill would impose a deadly threat to genuine collective bargaining. Under the cover of alleged interest in internal security the employers could and would utilize this legislation to cripple a union by beheading its leadership at any crucial point in the struggle with the employers for improved wages, hours, and working conditions.

Mr. HYDE. Do you think the union or the membership of the union should take any action against any person employed in a defense plant against whom there is reason to believe he might commit sabotage or espionage?

Mr. SELLY. No, I do not think so. I think the laws governing sabotage and espionage are explicit enough, and fortunately, at least at present, they preserve, they guarantee, the security of the Government while at the same time preserving the constitutional rights of individuals.

Mr. HYDE. You do not think there is any action any group should have, whether it be the union or the Government or the employer—do you think anyone should have the right to remove an employee from a defense facility, defense plant, if there are reasonable grounds to believe that that employee may be a saboteur?

Mr. SELLY. I do not believe the Government, an employer, or a union should be given any unconstitutional right to deprive a worker of his livelihood.

Mr. HYDE. Mr. Selly, you are a bright fellow. You know that I said that where there is reasonable grounds to believe he may engage in sabotage or espionage, do you think that anybody should have the right to remove that employee from a job in a defense facility?

Mr. SELLY. As I understand it, under the present law, a person may not be sent to jail for the reason that somebody in the FBI thinks that there is reasonable ground to believe they may commit espionage. There is a good reason, I think, why the law is written that way. It says the man must have his day in court, that overt acts have to be proven, and that after he has been convicted, then he may be punished.

My objection to this bill, and to your searching for an additional form for the alleged purpose of guarantying security, is that it seems

to me that the forms suggested here are unconstitutional forms, inequitable forms, and forms that seek to accomplish a purpose—that is, the appropriate purpose of security—at the expense of depriving people of their rights, of their fundamental rights.

Mr. HYDE. Mr. Selly, that is very eloquent, but it still does not answer the question. Do you think anybody should have the right to remove an employee from his job in a defense facility if there is reasonable grounds to believe he may commit sabotage or espionage?

Mr. SELLY. Unequivocally no, not without due process.

Mr. HYDE. Thank you.

Mr. SELLY. Employers who have urged adoption of legislation of this character, including employers in the communications industry, have sought to create the impression that such legislation is required because the American trade union movement is honeycombed with subversives and spies.

The truth of the matter is, of course, quite different. We do not hesitate to match the genuine patriotism of our members against that of any other group in the country. Further, we do not know of a single authenticated instance in the recent history of the United States of political sabotage, espionage, or other threat to the national defense or security which can be attributed to any trade union or its members.

So long as a union commits no illegal acts, it must have the right to adopt such collective-bargaining policies and to engage in such legal strike activities as its members may decide is necessary to protect their interests. A union cannot be prevented from carrying on such legal activities merely because some employer or Government official may charge that such activities are political or communistic activities. Lest the members of this committee think these fears are exaggerated, I would refer them to the long and bitter history of the attempts to crush the labor movement in this country revealed in the La Follette investigation. There you will find an ugly and sordid record of employer efforts to crush labor unions under the guise of fighting subversion, conspiracy, et cetera.

5. The bill puts into the hands of a single individual, the Attorney General, who we must assume is as fallible as other human beings, dictatorial powers to order the life or death of a trade union.

Mr. HYDE. Which bill is that?

Mr. SELLY. Both bills, and I will show you why in a few moments.

The Attorney General, acting on the unfounded charges of an employer or informer, could, under the provisions of this bill—and now I am talking about 528 exclusively—institute proceedings which would have the practical effect of beheading a union that was engaged in a most crucial struggle with the employers. No single individual, no matter who he is, should, in a democracy, have such power of life or death over a trade union.

Now I would like to divert for a moment to a question raised by Congressman Walter, who in questioning previous witnesses stated his belief that there is nothing in the bill which would permit such arbitrary or capricious action until review and final court order. I would call the Congressman's attention to the language on page 8 of 528, which provides specifically, starting on line 3—

That, after the issuance of such an order by the Board under subsection (b) of this section and before such order shall have become final, the Board shall have authority to issue such order or orders as it may determine to be appropriate

prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policymaking functions.

So, Congressman Walter, I think we have specific language in the bill which does exactly what it seems you would seek to avoid.

Mr. WALTER. Go on and read a little further to the next proviso, "That no order shall prohibit any individual from acting for any such organization in proceedings before the Board or for judicial review or enforcement of orders of the Board, until the order issued under subsection (b) of this section shall have become final."

Do you not think that adequately meets your objection?

Mr. SELLY. I do not think it does for the following reasons: First, the act of separating from the leadership of a union itself, its officially elected leaders, in itself does certain irreparable injury. If you can visualize a collective-bargaining situation—and this is not theoretical, this happens in the life of my union and every union, not every day in the week, but every month in the year—you are confronted with a situation where you are not able to reach an agreement with the employer because they think you are unreasonable and, conversely, you think they are unreasonable, and you are bargaining back and forth in an attempt to achieve a peaceful solution.

If at that time the Attorney General is given the power to remove from office the leaders of the union, you have effectively put a blackjack in the hands of the employer, because by the very nature of collective bargaining, a certain number of key individuals in any shop or in any union are delegated the primary responsibility for the negotiations, and if you remove them, it is the same thing as if you were to take every general in the field of battle and say, "He and all of his active staff have to be removed from the field."

Mr. WALTER. I would agree with what you say if that is a fact, but I do not think that means that, because the order is not final. Unless it is final, then it seems to me that the entire organization retains its——

Mr. SELLY. Congressman Walter, let me read again:

Provided, That after the issuance of such an order by the Board under subsection (b) of this section and before such order shall have become final, the Board shall have authority to issue such order or orders as it may determine to be appropriate prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policymaking functions.

I neglected to read a very important part—

and before such order shall become final—

in other words, there is provision for an interim beheading of the leadership of the union.

Let me go to the second point——

Mr. WALTER. Wait a minute, "no such order." What is that?

Mr. SELLY. That is under section (b), an order for dissolution. Dissolution of the union.

Mr. WALTER. You do not think that relates to the second order?

Mr. SELLY. No; because this is a specific proviso giving the Attorney General an additional power.

I want to go a little further, Congressman Walter, on this, another disability in connection with it. In addition to the crucial matter that before the order becomes final you can remove all of the officers

of the union and effectively behead a strike or negotiations—never mind strike—in the period when these people—you point to the language which followed it, and you thought at first that that might give some further protection, but it does not really because all that says is that in that interim period you are removed as an officer but, for the specific purposes of fighting these purposes, you are permitted to represent the union.

But meanwhile, the Attorney General is permitted, under the previous section, to appoint new officers. Who is going to finance the appeal and who is going to authorize you to do anything? The fact is, you are given no protection. This effectively permits the beheading of the union at any point where the Attorney General wants to issue this interim order.

Mr. HYDE. I would agree, Mr. Walter, if the law does not provide for the proper stay on appeal, it should so provide.

Mr. WALTER. I am not so sure. I think that "orders of the Board" on line 14, page 8, means any order that the Board lays down.

Mr. HYDE. That is what I thought.

Mr. SELLY. Yes; but it also specifically delimits the function that such a removed officer can perform, and it does not permit him to function as the leader of the union, as the person who handles negotiations or nickels. It permits him exclusively to act for judicial review, to appear for the organization in proceedings before the Board on judicial review.

In other words, it is like saying "We will cut off the head of the union, but the head of the union can come back and argue why he should be reinstated or why the union should not be penalized."

But it does not prevent the employer from being presented with this blackjack of the removal of the leaders of the union at any point in negotiations or in a strike struggle that might be crucial.

Mr. WALTER. Could your objection not be met by "after Board striking" until the order issued under subsection (b) of this section shall become final, so that it would read—

review or enforcement of the orders of the Board shall have become final.

Right after "order" I would strike that "before the Board" or "for judicial review or enforcement of orders of the Board until the order shall become final."

Strike out "issued under subsection (b)," so it would be applicable to all orders of the Board.

Mr. SELLY. We would still have the infirmity point, too, because of the existence of the previous proviso. It might be met in terms of language provided first if you cut out that proviso. That would be the simplest way of doing it. In the alternative, that where you indicate that there shall be no diminution of the functions of such a person by virtue of the order until the final order, that that be made specifically clear. That is not made clear merely by the addition of the language you give.

Again, the second proviso, the provided further, merely gives the officer a limited right to appear in terms of the review. It does not give him the right to continue to function in negotiations with the employer. That is what I am concerned about.

And the objection would be equally applicable if the power were to be given to a small group of individuals such as the Subversive Activities Control Board.

Further, the provisions for judicial review of the findings of the SACB are completely inadequate in any practical sense. They provide a picture of justice which is reminiscent of Alice in Wonderland where the accused's head is severed from his body and then he is given a trial to determine whether or not he is guilty of the alleged crime.

Mr. HYDE. Mr. Selly, is that not modified by the definitions of Communist-infiltrated organization on page 2 of the bill?

Mr. SELLY. It is modified by the definition on page 2, but not modified sufficiently, it seems to me, to give precise legal definition that would not subject accused persons to arbitrary and subjective judgments. It does not set up standards which are definable—I am not a lawyer, but to a layman it appears that standards are generally set up under laws.

The bill sets up standards of permissible conduct which are vague and impossible of precise definition. Counsel for the union will deal with the unconstitutional aspects of this legislation.

For my purpose, it is sufficient to refer to the danger to the free labor movement of a bill which permits harsh, punitive action by the arbitrary judgment of a few individuals based on indefinite criteria.

In this connection we wish to note that even if clear and specific standards were established we would oppose the bill for all the other reasons set forth above. The ambiguity of the standards here, however, compound the evils of these laws. Phrases such as "subversive activities," "Communist-front organizations," and "Communist-infiltrated organizations" have no clearly defined meaning and are subject to abuse. Senator McCarthy, for example, with the apparent approval of the Republican National Committee, has publicly accused the last 5 Democratic administrations of "20 years of treason," and Attorney General Brownell, who sponsors the bill before you, has publicly accused former President Truman of knowingly retaining a spy in the employ of the United States.

6. The bill sets forth certain criteria for judging whether or not an organization is in fact a so-called Communist infiltrated organization. Among those criteria is one which flies in the face of all historic precedent and judicial tradition in this country. It states that an organization may be judged to be Communist-infiltrated by considering "the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist organization," et cetera.

This is not only a complete abandoning of the fundamental American concept, which has established that guilt is a personal thing, it even goes beyond the un-American doctrine of guilt by association to establish a new witch-hunting formula of guilt by parallelism.

If a trade-union officer follows a policy for shorter hours, higher minimum wages, guaranteed annual wage, and against segregation, and the Communist Party espouses similar policies, under this legislation, this would be sufficient to establish the guilt by parallelism of such a trade-union officer or union——

Mr. HYDE. Right there, Mr. Selly, has anybody ever been found guilty of advocating communism because they advocated shorter hours, higher minimum wages, guaranteed annual wages, and so forth?

Mr. SELLY. No; but I have heard people characterized as treasonable by Senator McCarthy and others because they advocated New Deal social legislation.

Mr. WALTER. I was cited as a Communist because I wrote the Walsh-Healey Act.

Mr. GRAHAM. Mr. Selly, we are trying to figure out the time here. Mr. Kurzer, of the International Fur and Leather Workers; is he here today?

Mr. KURZER. Yes, sir.

Mr. GRAHAM. We may not be able to hear you today. All the members have work to do this afternoon.

When we adjourn today we will go over to next Wednesday. I do not know that we will be able to accommodate the International Fur and Leather Workers, but they are here from New York, and we would like to help them make their testimony without coming back here, if possible.

Mr. SELLY. I would like to cooperate with the chairman and with the other union, in all justice, because I know it is an imposition to have them come down again. If you could indicate to me the limit of the time available to you, I will try to cut the cloth to fit it.

Mr. GRAHAM. All right.

Mr. SELLY. If there were no limit of time, I would try to take an additional 20 minutes.

Mr. GRAHAM. You will end at 12 o'clock and then we will call on the International Fur and Leather Workers and give them 30 minutes.

Mr. SELLY. I want to give counsel an opportunity to deal directly with certain legal aspects with which I think the members of this committee will be particularly concerned.

Mr. GRAHAM. Will that not be in the brief?

Mr. SELLY. No; there are points which have been raised in the course of this discussion by some of the Congressmen to which he would like to address himself.

Mr. WALTER. Then why do you not testify on your brief now and let him take the rest of your time?

Mr. SELLY. If you tell us there are 20 minutes available, we will split it between us.

Mr. GRAHAM. All right; go ahead.

Mr. SELLY. When we consider the position traditionally taken by some employers in this country that all trade unions who fight for improved wages, hours, and working conditions are Communist the danger of such legislation is apparent.

As you know, in December 1951 the United States Chamber of Commerce said:

> The CIO has never rid itself of its Marxist economics. Virtually every important speech and publication * * * is replete with class-conscious hatred of employers and is designed to intensify the class struggle.

A report made for the Timken Roller Bearing Co. in February 1953 shows—

> a surprising coincidence of attitudes between CIO official publications and Communist papers. * * * The CIO follows the Communist Party line with the persistence of a shadow.
>
> Nor is the American Federation of Labor immune. Indeed, the preamble to AFL constitution might easily be considered adherence to the Communist y line. It states, "A struggle is going on in all the nations of the civilized

world between the capitalist and the laborer which grows in intensity from year to year and will work disastrous results to the toiling millions if they are not combined for mutual protection and benefit."

THE "BIG BUSINESS" ORIGIN OF THESE BILLS

The author of these bills is not unknown. He is Attorney General Brownell. But it is important to note that the essence of his proposals has been repeatedly urged by the most powerful lobbying organizations of big business, the National Association of Manufacturers, and the United States Chamber of Commerce. In addition, individual large corporate interests such as General Electric, International Telephone & Telegraph, and the Western Union Telegraph Co. have periodically urged antilabor legislation of exactly this character.

It is not surprising, of course, that Mr. Brownell should propose legislation which is thoroughly approved by the representatives of the powerful corporate interests. His background and life's work, until he became Attorney General, was either in the employ of these same corporate interests or as a director of large corporations in America. These included the Excess Underwriters, Inc., National Retailers Mutual Insurance Co., Excess Insurance Co. of America, Commodore Hotel, Inc., and Automobile Club Service, Inc.

Among other corporation executives, spokesmen for the American Cable & Radio Corp., a subsidiary of the giant International Telephone & Telegraph Co., and the monopoly Western Union Telegraph Co., have appeared before congressional committees in recent years and have advocated legislative proposals the essence of which have been incorporated in the Brownell bills.

It is not difficult to understand why this happened because the employers in our industry have made it clear on the record that their purpose is to curtail and limit the power or our union to protect and advance the interests of their employees. The real aim of I. T. & T. and WU is not to protect the national security but to smash democratic trade unionism in order to remove our union as an obstacle to unbridled speedup and profits.

In a statement before the Senate Committee on Internal Security, Mr. J. L. Wilcox, vice president in charge of employee relations for Western Union, complained to the committee:

It is so hard for me to distinguish between what might be deemed a good union practice from a union standpoint and some of these acts which we might feel are subversive from a Communist angle.

Mr. Wilcox's dilemma is understandable. To an employer the collective activities of workers in defense of their rights and for improved wages, hours, and working conditions, are "subversive." The The fact is that neither Mr. Wilcox's language nor the language in the bills now under consideration distinguish between subversive activities and sound, bonafide, trade union practices. Indeed, if these measures were adopted into law, they would completely equate the two and would end free trade unionism in the United States.

The question of security in the communications industry: Some of the communications monopolies have attempted to make my organization and its members targets of special repressive legislation. They point to the nature of the industry and its importance in the national defense.

The fact is that special legislation has existed for many years to protect the national interests in the communications industry. The Federal Communications Act of 1934 makes it a criminal offense for anyone to divulge the contents of a telegraph or cable message. Severe penalties are provided for acts in violation of this law and yet there is no record of any member of my organization or any other union in this industry so far as we know, having been charged with, let alone convicted of violation of the law.

As to the record of my organization in the fight for the national interest, we are ready and willing and anxious to match it with any group of employers, Government agencies, or anyone else. In war or peace there is no group of employees in the United States and no group of any kind with a better record of devotion to the interests of our country. In fire, flood, or disaster on land or sea, members of our union have written a heroic record. This has been attested to by many people in high places over the years.

During World War II our union proposed and the Government adopted the American Communications Association safety and anti-espionage plan to guarantee safety of communications and convoys at sea. Comdr. E. N. Webster, speaking for the Commandant of the Coast Guard (now a Commissioner in the FCC) said of ACA with respect to this plan:

> The thorough study made by the ACA of the complex problem of providing, in time of war, a greater protection of life and property at sea is most commendable and the suggestions of the union have guided the various Government agencies in providing those vitally needed protective measures.

Gen. Dwight D. Eisenhower, in response to a no-strike pledge of our union during the war, spoke as follows:

> All ranks of the Allied Forces are deeply grateful for your pledge of continued cooperation. We fully appreciate the vital part played by all groups affording communications.

We could quote dozens of other distinguished Americans and newspapers in a similar vein.

In peacetime, similarly, ACA has not only fought in the interests of its members as part of the general national public interest, but has been an effective and sometimes the only voice against attempts of the telegraph communications monopoly to impose higher rates and to curtail service to thousands of communities.

Similarly, we are now engaged in a struggle to defeat the current attempts of the banking interests to secure a merger of international communications by creation of a monopoly. Our opposition to this is based on our conviction that the national defense, the general public interest and the interest of the employees would be adversely affected by the creation of such a monopoly.

In the light of our record in tripling the average wages of telegraph workers for the past 15 years, securing paid vacations, improved pensions, higher sick benefits, night differentials, daily overtime and other premium pay, and job security, it is not surprising that the corporations in this industry initiate and support legislation designed [illegible] by our union and all other labor unions which serve the interests of the American working people.

HOUSE JOINT RESOLUTION 527

Of all the rash of antilabor bills which have recently been put forward, this is perhaps the most discriminatory, the most unjust and with the greatest potentialities for union busting.

In the guise of providing for measures to safeguard defense facilities the employer is given the almost perfect weapon for the destruction of a union.

Anyone familiar with the operations of American trade unions understands that a union in any given shop, plant, factory or other place of work, is as strong as its shop stewards system. Shop stewards, in most unions including my own, are elected by the group of workers in a particular department or section of the shop, and they are responsible to that group for the handling of grievances where they occur, that is, on the job. Effective functioning of a shop steward system is not only essential to protect workers, but is indispensable in the maintenance of stable labor relations. An employer who seeks to weaken the shop stewards system generally finds that he has "cut off his nose to spite his face" because a weak shop stewards system means multiplicity of unsettled grievances which lead ultimately to curtailment of production.

Under House Joint Resolution 527, the first target of the employer who wants to break the union will be the leading union forces in the shop, that is, the shop stewards. As we have already indicated, to an antilabor employer, any action in protection of wages, hours, and working conditions becomes "subversive."

In a situation where the union is struggling to establish itself or, where established, to negotiate a collective bargaining contract, the employer is given a blackjack to beat the union over the head, in the form of this bill. He need only openly or anonymously charge that certain individuals (mainly shop stewards) threaten the protective capabilities of his plant.

He will allege of course that he has "reasonable ground to believe they may engage in sabotage of the industrial economy and protective capabilities of the United States" et cetera. Upon the basis of such a phony charge, at a crucial point in a contest between management and labor under this bill we would have the Government putting its heavy hand on the management's side of the scale.

Attorney General Brownell will no doubt protest that the individual worker is protected with due process procedures. Counsel for the union has dealt with the legal aspects of this problem. For any practical trade-unionist, experience with some employers indicates that they will not be concerned with the ultimate disposition of any case. In a dispute between management and labor all the employer needs is to disrupt the shop and intimidate the employees by preferring charges and securing even temporary displacement of the active union members in order to accomplish his purpose.

This legislation would put the Government in the business of issuing licenses to American workers to determine whether or not they may earn a living. It goes in the direction of the Fascist work codes and is abhorrent to every American concept of democracy.

In summary, these bills would impose undemocratic and discriminatory prohibitions against the free labor movement in this country; they seek to substitute for the democratic will of American trade-union

members the autocratic dictates of a Government agency; they are flagrant examples of class legislation which would deprive working people of their franchise while giving lethal weapons to the employers for union-busting purposes; they ignore the real problems confronting the entire American people, that is, the dangerous encroachment of monopoly and the threat of a serious economic crisis; they would contribute to the hastening of that crisis by depriving workers of the opportunity for effective collective bargaining. And they would effectuate this program under the false cover of anticommunism.

With this vague criteria for judging who is not a Communist-front member, a Communist-infiltrated person, et cetera, even the CIO has not been found guiltless by the United States Chamber of Commerce. For instance, in December 1951, the chamber published a brochure dealing with Communist infiltration and labor movements, in which it said, among other things, the following:

> The CIO has never rid itself of its Marxist economics. Virtually every important speech and publication is replete with class-conscious hatred of employers and is designed to intensify the class struggle.
>
> The CIO follows the Communist Party line with the persistence of a shadow.

Under these same criteria certainly the generally considered respectable American Federation of Labor could also be labeled a Communist-infiltrated or a Communist-front organization, because, let me read from their preamble:

> A struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries. A struggle between the capitalist and the laborer which grows in intensity from year to year, and will work disastrous results to the toiling millions if they are not combined for mutual protection and benefit.

The reductio ad absurdum of the thing of thinking which equates communism with the advocacy of decent social legislation was provided either in the House or in the Senate, I think, last week in a hearing, where some Congressman read to a witness quotations from the encyclicals of a prior pope to find that the witness planned those as communistic declarations when he did not know who was the author.

Mr. HYDE. Mr. Selly, in that same reference, statements have been made with regard to charging people with being Fascists.

Mr. SELLY. Yes.

Mr. HYDE. Then if reckless statements are being made on all sides by all people, is that any reason why we should not try to protect ourselves against espionage and sabotage?

Mr. SELLY. No, it is not, but it is every reason why we should not in trying to protect ourselves against espionage and sabotage become guilty of the thing which we preach against, and that is the deprivation of constitutional rights to people, and the protection of the Constitution and the Bill of Rights, to which we are all sworn to allegiance.

Also, it is not the reason why we should not condemn these baseless charges, no matter from whom and directed toward whom, and insist on a public utterance at least to the extent that we can inveigh against it.

Mr. WALTER. Do you not think a quick, easy solution to all of these problems would be the enactment of the law making it illegal to be a member of the Communist Party?

Mr. SELLY. I do not think so, Congressman. I have been asked this question before in other hearings, and I will anticipate it even if it were not going to be asked. I would be opposed to a law illegalizing any political party in this country, because I think such a law is abhorrent to the Constitution and the Bill of Rights. I think that the electorate has the power, and in them should reside the sovereign power to determine their political philosophy, their elected officers, and so on, and so forth, just as I want the members of my union, whether they are right or wrong, I want them to be able to make the democratic decision as to who their leadership be, what their policy should be, and I do not want to submit—with all due respect—your judgment for theirs any more than you would want people living in some other State to affect your legislation. It is that fundamental democratic right which I think we have to protect and which is seriously endangered by both of these bills.

Mr. WALTER. Of course, your entire argument is based on the major premise, erroneous as I see it, that the Communist movement is merely a political movement. I think it is more than that.

Mr. SELLY. No; I have made no premise in regard to that; I have made no premise in regard to what the Communist movement is for the purpose of my answer before. I reassert that I would, as I say, rely, regardless of how you or I might characterize the Communist movement, I would rely on the inherent democratic process that we have established in this country to permit the people to make a determination without having any Government agency license them in that determination, and say, "This you may do and this you may not do," without the proscriptions that are included in this bill.

Mr. HYDE. Mr. Selly, you would not permit the people, you would not permit anybody, to discharge a person from an association who has given some cause for the belief he might commit sabotage?

Mr. SELLY. Not unless there was proof, not unless due process was invoked. Incidentally, you see, you are terribly concerned apparently about the possibility—a possibility to which you cannot point in practice—that the workers are going to be guilty of sabotaging and espionage. The fact is that workers——

Mr. HYDE. That is not what you described as workers, sir, but anybody. There have been lots of people who did not come under the description of workers, as such, who have committed sabotage. I am not concerned simply with the workers.

Mr. SELLY. As I say, unfortunately, I have never seen Congress concern itself to the same extent with the question of the conduct of certain corporations during the last war, when President Truman—then Senator Truman, as chairman of an investigating committee—made the finding, and it was a very harsh finding, that American industry has us over a barrel. They will not engage in war production because they do not consider it sufficiently profitable.

I do not have the exact quote here, but I assure you it is more harsh than my paraphrase of it. I have not seen a preoccupation with that problem.

Mr. GRAHAM. Mr. Selly, I am sorry, but your time is up.

STATEMENT OF VICTOR RABINOWITZ, COUNSEL, AMERICAN COMMUNICATIONS ASSOCIATION

Mr. RABINOWITZ. I would like to file my statement and just refer to a few matters which have come up in the course of the hearings here today and which apparently trouble the members of the committee.

Mr. GRAHAM. Your statement, without objection, will be made a part of the record at this point.

(The statement of Victor Rabinowitz is as follows:)

STATEMENT SUBMITTED TO HOUSE JUDICIARY COMMITTEE ON BEHALF OF AMERICAN COMMUNICATIONS ASSOCIATION, VICTOR RABINOWITZ, COUNSEL, FRIDAY JUNE 25, 1954

This statement shall be confined to a consideration of the legal objections, constitutional and otherwise, to House Resolution 527 and House Resolution 528, the basic policy objections to the bills being covered in the statement submitted by Joseph P. Selly, president of the American Communications Association.

1. HOUSE RESOLUTION 527 (THE SCREENING BILL)

The basic constitutional objections to this bill are two: (1) It violates the rights of free speech and free association guaranteed by the first amendment to the Constitution, and (2) it violates the due process clause of the fifth amendment to the Constitution because it deprives individuals of valuable property rights without due process of law.

This bill would give to the Federal Government the right to remove from any "defense facility" any individuals "as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts." A "defense facility" is defined as any business organization which the Secretary of Defense declares to be a defense facility and this could, at the option of the Secretary of Defense, include virtually every employer. Evidently, the theory behind this is that in a period of total mobilization, all industry is essential to the security of the country. The effect of a ruling unfavorable to an individual brought up on charges under this bill might therefore well bar him from earning a living, and would certainly prevent him from earning a living at his chosen vocation.

The term "other subversive acts" is not defined in the bill but we know from experience that it is broad enough to include almost any kind of activity of which the authorities do not approve. Thus, the Industrial Security Board has frequently alleged, as instances of subversive activity, conduct such as the reading of the New York Compass, registration in the American Labor Party, or being the son of a man who 15 years ago signed a Communist Party nominating petition.

Under this bill it is not even necessary to establish that the accused ever has engaged in conduct thus characterized as "subversive activity"—it is sufficient to establish that there is reasonable ground to believe that he may do so.

To add to the evil of the bill, under its provisions it may become effective whenever in the opinion of the President the security of the United States is endangered by reason of "disturbance or threatened disturbance of the international relations of the United States." It may accurately be said that there has not been a time in the last generation when the international relations of the United States have not either been disturbed or where a disturbance threatened and this state of affairs is certainly likely to continue for an indefinite period into the future.

It is elementary law that the right to engage in one's chosen vocation is a property right; that one may not be deprived of such property right without due process of law, and that due process of law includes notice and a hearing (*Allgeyer* v. *Louisiana*, 165 U. S. 578).

Attorney General Brownell in the press release accompanying these bills apparently recognized this since he stated that due process of law was provided in his proposals by the requirement that there be "specific charges and hearings." An examination of the bills, however, discloses that this claim that the requirement of due process is met is not justified. As is indicated above, the standard to be applied—namely, that the individual is likely to engage in subversive acts—is so vague and general as to provide no intelligible guide to conduct. "A statute

which either forbids or requires of the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law" (*Connally* v. *General Construction Company*, 269 U. S. 385).

Moreover, the "hearing" provided by the bill is on its face not the same kind of hearing that is required by the Constitution, for the bill provides "that no investigatory organization shall be compelled to disclose its informants or other information which in its judgment would endanger its investigatory activity." Under this proposed legislation, therefore, a person may be removed from his job and barred from getting any salary on the basis of a "hearing" at which the evidence against him may well not be introduced into the record, at which he will not get the opportunity to confrout his accuser or to cross-examine him, and at which he will get only a summary of the information in support of the charges against him.

This precise matter was considered by the United States Supreme Court in *Ohio Bell Telephone Co.* v. *Public Utility Commission* (301 U. S. 302) in which the Court was reviewing the action of an administrative agency made on the basis of confidential facts not spread upon the record. In the words of the Court, the Commission acted "upon the strength of information secretly collected and never yet disclosed." The Court said "this is not a fair hearing essential to due process. It is condemnation without trial * * * this will never do if hearings and appeals are to be more than empty forms." (See also *Morgan* v. *United States*, 304 U. S. 1; *St. Joseph Stockyards* v. *United States*, 298 U. S. 38; *In Re Oliver*, 333 U. S. 257.)

Indeed, the Court has gone much further than this. In cases where all of the evidence was introduced but where the right to cross-examine the witnesses was limited, the Supreme Court has held that due process was not met (*Reilly* v. *Pinkus* (338 U. S. 269)). The process of suspending and discharging Government employees on the strength of inadequate hearings and charges, supported only by secret and "confidential" information has perhaps hardened us to the fundamental injustice of such proceedings. We shall not discuss the legality of such proceedings with respect to Government employees since that issue was not raised by this bill. However, as a bill applied to private employment, we will venture to say that with all due respect to Attorney General Brownell, it would be hard to find any lawyer with standing in the field of constitutional law who would affirm its constitutionality.

2. HOUSE JOINT RESOLUTION 528 (COMMUNIST INFILTRATED ORGANIZATIONS BILL)

This bill is patterned after the Internal Security Act of 1950. It contains many of the constitutional infirmities of that legislation (some of which are the subject of litigation now pending in the Court of Appeals for the District of Columbia) and many new proposals which are equally objectionable from a constitutional point of view. Moreover, the bill is self-contradictory, obscure as to its meaning, and in many respects absurd in its terms.

It must first be noted that this bill has no application to "Communist-action" or "Communist-front" organizations, both of which are covered by the act of 1950 and are specifically exempted from the operation of this bill. Although from a comparison of the definitions contained in the act of 1950 with those in the pending bill, it would appear that both "Communist-action" and "Communist-front" organizations are considered to be more dangerous to the established order than are organizations which are merely "Communist-infiltrated," the proposed bill would impose a much more severe penalty on "Communist-infiltrated" organizations than on "Communist-action" groups since it provides not merely for the registration of such organizations, but for their dissolution and liquidation. As if this were not confusing enough, the standards set up by this bill, by which the Subversive Activities Control Board shall determine whether an organization is Communist-infiltrated, are substantially identical with the standards set up in the act of 1950 by which the Board determines whether an organization is a Communist front. Just how the Board is to apply these identical standards and yet distinguish between a Communist-front and a Communist-infiltrated organization is not clear from a reading of the bill.

The standards themselves are clearly objectionable (1) as being too vague to meet constitutional requirements and (2) as being in themselves unreasonable and arbitrary. The vagueness derives in part from the use of the "extent to which" test first introduced into our law by the act of 1950. So, the bill provides that the Board shall consider "the extent to which" the organization under

examination deviates from the policies of a Communist-action organization; "the extent to which" the organization promotes the objectives of a Communist action organization, etc.

We can think of no more effective criticism of the "extent to which" test than that made by John W. Davis, senior member of the American bar, in discussing similar language in the Mundt-Nixon bill, predecessor to the act of 1950. Said Mr. Davis:

"Or take the introductory phrase itself as used throughout—'the extent to which, etc.'—what are the limits which these words envisage? To how great an extent, how customary a practice, how definite, pervasive, or continuous a policy? There would seem to be no room here for the application of any doctrine of de minimis. But assume, if you will, that the organization contains some members or even some 'leaders' who (as under the clause (H)) recognize the 'disciplinary power of such foreign government' or (as under clause (J)) 'consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization,' how many or what proportion of such individuals are to be held sufficient to color the entire organization? What is to be the status of a dissenting member, a minority of members, or even a majority who do not hold such views? Are they and the organization to be condemned on the principle of noscitur a socils, i. e., guilt by association?"

This is not the only respect in which the standards set up in the act are vague. One of the criteria adopted by the bill requires the Board to consider "the extent to which" the organization is in a position "to impair the effective mobilization of use of economic resources or manpower in connection with the defense or security of the United States." We have recently seen cases of elevator operators, post office employees, and employees of the Bureau of Printing and Engraving who were discharged on security grounds. Is it too much to believe that organizations of such employees, or of waiters, barbers, and bootblacks, could be similarly described? Particularly dangerous are the words "in a position to impair * * * use of manpower." Any organization which seeks to influence public opinion in any respect whatsoever, whether by publication of a newspaper, the holding of public forums, or the passing of resolutions addressed to their Congressmen, could come under such a definition.

Not only are the provisions of the act unconstitutional because they are vague; they are similarly unconstitutional because they are arbitrary and unreasonable. The whole concept of the test of "nondeviation" is an unreasonable and arbitrary test. It is absurd to say that an organization shall be proscribed and compelled to dissolve because the Communist Party happens to agree with it on certain issues of public importance. It will be noted, moreover, that the act is mandatory in the penalties that will be imposed should the Board find the organization to be Communist-infiltrated. Upon such a finding, the organization shall be dissolved. The fact that the organization may be organized for perfectly legal purposes, the fact that the majority of its members may be non-Communist or anti-Communist, the fact that the members may not know of the Communist affiliation of some of its leaders, the fact that many of its leaders may be non-Communist or anti-Communist, is quite irrelevant, if the standards set by the act are met.

It is respectfully submitted that under this legislation there is no limit to the damage that could be done by the Board. Let us take, for example, the National Urban League, an illustration we use because it is typical of thousands of civic organizations interested in the welfare of a group of Americans. It is an influential organization; it issues press releases, holds meetings, and issues publications. There is no doubt that it is in a position to affect the mobilization both of economic resources and manpower should it so desire. It, therefore, meets one of the criteria by the act. There is, further, no doubt that, insofar as the National Urban League has urged a policy of nondiscrimination in employment and nonsegregation in schools, public conveyances, and other public places, its policy does not deviate and has not deviated for many years from the policies of the Communist Party. Since it has used its funds, resources, and personnel to further and promote these objectives, which are also among the objectives of the Communist Party, it meets the second and third of the criteria set up in the act for determining whether an organization is a Communist-front organization. As the bill is written, the Board could, on the basis of such findings, find that the National Urban League was a Communist-infiltrated organization. If, in addition to that, testimony could be produced to the effect that one or more persons active in the National Urban League is also a member of the Communist

Party (whether the members know about it or not), the case against the National Urban League would be virtually airtight. The Board, on such a finding, would be required to direct the dissolution of the National Urban League.

No doubt the sponsors of the bill will disavow any desire to take such action against the National Urban League. We may ask them what kind of organizations they do intend to proceed against.

Certainly not the Communist Party or "Communist-front" organizations which are exempted from the operation of the bill. What, then, is the purpose of this bill?

Although the bill provides for court review of its findings, the conditions under which such review is granted are completely inadequate. In the first place, the law requires that the findings of fact made by the Board are conclusive if supported by substantial evidence (not a preponderance of the evidence).

In the second place, the effect of the act would be to destroy any organization and indeed to make judicial review impossible as a practical matter after an order of the Board has been handed down.

For the act provides that pending court review, the Board may remove the existing officers of the organization, and replace them with officers having the approval of the Attorney General. The old officers are permitted to remain in office for the sole purpose of prosecuting the review procedures provided by the act. Just how this could be accomplished as a practical matter is difficult to understand. Who would determine whether judicial review is to be prosecuted at all—the new officers or the old? If the new officers are to make this important policy decision, we may assume that since they have the approval of the Attorney General, they will not want judicial review. If the old officers are to make this determination, the question is raised as to who will finance the appeal and whether the old officers actually represent the organization for whom they speak, in view of the fact that they have been removed from office and hence are no longer subject to the control of the membership.

Many other defects may be noted in the bill, some deriving from constitutional issues which are now pending in the Court of Appeals. The basic objection, however, is the fundamental one that the bill is so broad in its scope, so indefinite in its definitions, and so drastic in its penalties that it presents a serious threat to the continued existence of any organization which would seek to discuss any current political, economic, or social problem.

Mr. RABINOWITZ. I would like to start off by agreeing—perhaps for the last time—with Congressman Hyde when he said that one of the difficulties with this situation is that there is so much misinformation going about about what is happening. As an illustration of such misinformation, I can quote, with all due respect to Congressman Walter, a statement he made a little while ago—at least if I heard him correctly, he made it—that David Greenglass was an organizer for the United Electrical Workers.

I am advised he was not an organizer for the United Electrical Workers and that he was not even a member.

Mr. WALTER. I have here a circular that was brought to me by one of the members of the committee; maybe it was in one of the files of the Un-American Activities Committee. It quotes a newspaper clipping from the New York Post of April 3, 1951:

> David Greenglass, confessed atom spy, rated as one of the four worst by the Atomic Energy Commission, was a UE organizer. When Judge Irving Kaufmann sentenced his two partners, he declared, "Your crime is worse than murder," and doomed them to the electric chair. One of them is Greenglass' sister, against whom he testified.

That may be wrong, but that is blown up from the New York Post.

Mr. RABINOWITZ. That is precisely the point I make. There is a great deal of misinformation going around, and that is one of the reasons for the proposal of this legislation. That is typical of the misinformation that is going around. A statement was made here a

little while ago in connection with 527—I do not recall by whom—with reference to the Bailey case in which someone said that the United States Supreme Court held that there is no right, no constitutional right, to Government employment, and held so in the Bailey case.

There was no such holding in the Bailey case. The Court of Appeals of the District of Columbia in the Bailey case, by a 2-to-1 decision, so held. The United States Supreme Court divided 4 to 4 on that. So I have 4 members of the United States Supreme Court on my side of that question, and there are 4 members of the United States Supreme Court on the other side. Certainly it cannot be stated that this question has been settled quite so certainly.

Whatever may be the situation with respect to the constitutional right to Government employment, 2 things are perfectly clear: No. 1, to remove a man from a job, to remove a man from his occupation, is punishment. The United States Supreme Court has so said in at least three cases that I can think of at the moment, and perhaps in more. Three cases are *U. S.* v. *Lovett*; *U. S.* v. *Garner*; the third one I do not remember, but it was a case decided about 1867.

Mr. HYDE. Do you think a man should be removed from his job because he does not pay union dues?

Mr. RABINOWITZ. I believe that a man should be removed from his job if he fails to live up to the obligations that he owes to the union and to other people. Let me get to that in just a moment.

Mr. HYDE. How about an obligation to the United States?

Mr. RABINOWITZ. I certainly think he should be removed from his job if he fails in his obligations to the United States. As a matter of fact, if he fails in his obligations to the United States, I think he should be thrown in jail.

Mr. HYDE. Who should have the authority to make that move?

Mr. RABINOWITZ. A criminal court. I admit, Congressman, that as I sat here and listened to this, I thought perhaps I was very, very old fashioned; and I still believe, and very wholeheartedly, in some old phrases which come back from——

Mr. HYDE. He should go to a criminal court——

Mr. RABINOWITZ. If he has committed a crime.

Mr. HYDE. If he committed an offense against the United States but does not have to lose his job, he does not have to go to a criminal court to save his job if he has committed an offense against the union?

Mr. RABINOWITZ. If under the terms of a union contract he is required to pay his dues in order to bear the expenses of the union which is representing him and he fails to do so, I think he should lose his job as a result of it—just in the same way as a person who fails to pay taxes to the Government is punished for it, and a person who fails to meet his ordinary obligations is subject to certain consequences.

The fact, however, is that the United States Supreme Court has said that removal from a job by Government act—let me be more specific—removal of a man from his job by Government act is punishment.

Mr. HYDE. Regardless of what act it is that removes him, he is suffering the same punishment, is he not—losing his job?

Mr. RABINOWITZ. That may be, but it is not an action of the Government. We can argue some other time the question of union shop. I am perfectly prepared to do so.

Mr. HYDE. I am not arguing the question, sir. I am arguing this fundamental principle of losing his job, about which you are so afraid here.

Mr. RABINOWITZ. That is right. And, as I say, I am sufficiently old fashioned to be prepared to rely on what the United States Supreme Court has said with respect to that. The United States Supreme Court has also said that to deprive a person of the right to engage in his chosen occupation—for example, as a communications operator. a longshoreman, an electronics engineer, or anything else—is depriving him of his liberty and his property.

Mr. HYDE. You are depriving him of his liberty and his property if he fails to live up to union regulations.

Mr. RABINOWITZ. There is nothing in the Constitution that says an employer may not fire a man or that a union may not fire a man. We are now talking about the Government firing a man; and as Mr. France pointed out before——

Mr. HYDE. You are a bit mistaken there. We are talking about his losing his job.

Mr. RABINOWITZ. That is right. We are talking about the right of a man to hold the job free of Government interference. It is perfectly obvious that an employer may fire a man without interfering with his constitutional rights. That happens every day in the year, but the Government may not fire a man without interfering with his constitutional rights; and there is a wealth of difference between a Government law which says that a man may not hold his employment, and an employer who for a just cause or not a just cause fires an employee.

If an employer does it, well, this is traditional—as traditional in our American law as is the concept of due process. If there is a union, there are presumably remedies under the union contract. If there is no union, the guy is probably out of luck. It is quite a different thing to have the Government pass a law saying that a man may not hold a job, not because he has done anything but because somebody—and I come to Congressman Walter here—perhaps one man, without any judicial review, says—not that he has done anything, oh, no; but that in my opinion, untrammeled by any judicial review, without any standards at all, this is 527 that I am talking about, without any standards at all—"I have decided that this man, who has not committed a crime, may engage in subversive activity."

Mr. HYDE. Then you agree with Congressman Eberharter, that it is better to leave this decision of whether there are reasonable grounds to believe that a person might engage in sabotage or espionage to the employer on information he gets from the Government rather than to leave the decision up to a Government board.

Mr. RABINOWITZ. The employer and the union proceeding under proceedings that are contained in the normal collective-bargaining contract would determine the right of an individual employee to his employment. This is provided in most collective-bargaining contracts, and I do not see any reason for the Government to step in and disturb the matter.

Mr. WALTER. You said that if some man, unsupported with any evidence at all, would make a charge, that that would be sufficient to enable the Government to remove that man. The language goes further

than that in 527—"reasonable grounds to believe." That just does not mean arbitrary conclusions.

Mr. RABINOWITZ. No, sir. It means that a man—and who it will be, we do not know, because the act does not set up a board or an agency or any kind of a Government agency to settle this thing; it is just somebody; the President will decide. But it might very well be a man, and he will look at the evidence, and it need not be evidence with which the witness is confronted, because the act provides that that is not necessary. This man will listen to the evidence and will decide that, in his opinion, this man is likely to engage in subversive activities, and therefore he will say to the employee, "You may no longer work at your occupation as a longshoreman."

There is no judicial review provided in the act.

Mr. WALTER. It is expressly excluded.

Mr. RABINOWITZ. That makes it worse. On this question of subversive activities, I had a case within the last 2 weeks in which an employee was removed from a defense plant——

Mr. GRAHAM. Your time is up, but you were interrupted. Two minutes of your time was taken up for questioning, so you have 2 minutes left.

Mr. RABINOWITZ. Thank you. I will not even use it all. I have a case before me now in which an employee was removed by a security industrial board on the ground that he had committed a number of subversive acts, and the subversive acts are listed. He was given full notice. What are the subversive acts? That he was a reader of the New York Compass; that he was a member of the American Labor Party; that his father, when this individual was 4 years old, had signed a Communist Party nominating petition.

Now, maybe he can go to a lawyer sometime and the lawyer will say to him, "O. K., brother; you have just lost your job and I am willing to give you a break in this situation. In 4 years' time—if I have a fee which will pay this"—and I would say $10,000 is a reasonable fee for counsel fees and for printing expenses to take a case like this to the United States Supreme Court—"you can get your job back."

Ninety-nine out of every one hundred cases, the employee will say, "I am sorry; I will have to go back to selling pencils because I do not have the $10,000 or the 4 years to wait while you test my constitutional right as to whether I can be fired for having read the New York Compass or because my father 20 years ago signed a Communist nominating petition." This is not imaginary, gentlemen; this is what happens every day of the year.

Mr. WALTER. Do you not feel that perhaps that sort of a ridiculous situation could be eliminated with the enactment of legislation that sets up guideposts and provides for review in court?

Mr. RABINOWITZ. But what are the guideposts?

Mr. WALTER. I did not say. I said suppose it was done.

Mr. RABINOWITZ. If the guideposts were better, I suppose I would have to see the legislation before I could say whether it would meet all of the requirements. But certainly in the case that I gave of this poor fellow who read the Compass, at least he had this advantage. They charged him with things that he did do, because these were true—these three charges.

Mr. HYDE. I am familiar with that type of case because, as I have said here before, I have been an attorney in some of them. Can you suggest any legislation that could meet the situation, and do you think any legislation is necessary?

Mr. RABINOWITZ. No, sir; I think that there is plenty of legislation on the books. There are laws against espionage; there are laws against sabotage; there are laws against conspiracy to commit espionage, conspiracy to commit sabotage, lots of other laws, similar laws, on the books. As far as I can see, they are taking care of our national defense perfectly well.

Mr. HYDE. Would you submit a statement as to which laws you think cover the situation now?

Mr. RABINOWITZ. Yes; of course.

Mr. GRAHAM. If there is any additional statement that you wish to submit, which you want to place in the record, we will receive it.

Mr. GRAHAM. Mr. Kurzer, before you begin, please, will you please file your statement. Do you have a legal brief, too? If you have you may file that.

Mr. KURZER. We do not have any legal brief.

Mr. GRAHAM. Do you wish to file one later on?

Mr. KURZER. We just have a statement here.

Mr. GRAHAM. We are starting at 5 minutes after 12, so we allow just 30 minutes. You will run to 12:35, so that we understand.

STATEMENT OF HERBERT KURZER, INTERNATIONAL EXECUTIVE BOARD MEMBER, INTERNATIONAL FUR AND LEATHER WORKERS UNION OF THE UNITED STATES AND CANADA

Mr. KURZER. I hope, Congressman, that I will be able to finish the statement. I do not think it will take more than perhaps 40 minutes.

My name is Herbert Kurzer. I am elected official of Local 125 of the International Fur and Leather Workers Union, whose office is located at 250 West 26th Street in New York City. My testimony in opposition to House Joint Resolutions 527 and 528 is on behalf of the International Fur and Leather Workers Union which is the bargaining agency for 100,000 workers in the fur and tanning industries of the United States and Canada. The union for which I speak was first established in 1914 and today enjoys stable bargaining relations with all employers of the fur industry and with corporations employing 90 percent of the production workers of the leather industry.

I am here to state the opposition of my union to House Joint Resolution 528, which would give the Subversive Activities Control Board, set up under the McCarran Act, power to destroy any union in the country.

I am also here to state my union's opposition to House Joint Resolution 527, which would turn over to the Executive the power to fire and blacklist workers in all American industry.

For more than 200 years, employers and their agents who opposed the right of workers to join unions of their own choosing, and to bargain collectively for better hours, wages, and working conditions, have claimed to find in such activity a sinister and subversive plot against the established order. In the late years of the 18th century,

cordwainers, bricklayers, and carpenters who sought a workday shorter than the established span of hours between sunrise and sunset were described as Jacobins and Republicans, seeking to repeat in America the terrors of the French guillotine.

Labor's drive through the 19th century for the rudiments of collective bargaining brought from the employers of the time outcries that such activity was "anarchistic." "Socialist," or directly lined to the "Paris Commune." Resistance to unions and to workers' justified demands was always covered up by pretended patriotic motives in defense of the national welfare.

In the summer of 1886, for instance, the Boot and Shoe Manufacturers Association of New England described Massachusetts leather workers on strike against their employers as "vicious men led by Communists and Anarchists from abroad who are seeking to disturb the peace, destroy the industrial prosperity of the community, and establish a Communist regime in New England." That the leather workers wanted wage increases, the employers' association did not find worthy of mention.

The attacks on labor after the First World War followed the same pattern, when labor's campaigns for the 8-hour day were met with outcries against syndicalism and Bolshevism

Mr. WALTER. Do you intend to discuss this legislation as you go on?

Mr. KURZER. Yes, sir; I am coming to it in a moment.

Mr. WALTER. I have read your statement hurriedly and I do not see a word about the law. There are just these general attacks. I am——

Mr. KURZER. I am coming to it in just one moment.

Mr. GRAHAM. Will you please come down to the law?

Mr. KURZER. Yes, sir.

Employers of the 1930's explained their millions of dollars spent for labor spies and weapons of industrial warfare as required for a crusade against sabotage and communism. A pamphlet entitled "Join the CIO and Build a Soviet America," was widely circulated. Such demagogs as Gerald L. K. Smith and Charles E. Coughlin proclaimed loudly their discoveries that rubber workers, steelworkers, and autoworkers in building a union were directly and treasonably serving as agents of the Kremlin.

Today, for the first time in history, such employer propaganda is embodied in legislation before the Congress. And for the first time in history it is proposed to make such propaganda attacks grounds for the actual dissolution of any labor union in America.

This is the substance and objective of House Joint Resolutions 527 and 528.

This is also the nub of the Goldwater-Rhodes, Butler-Miller, and McCarran proposals for applying capital punishment to a union for the purported political beliefs or associations of any one or more of its active members. That such a procedure is in flagrant violation of the Constitution has already been testified to by others at these hearings.

Madam and gentlemen, there is a tremendous resistance to the Taft-Hartley Act from the leadership and the ranks of organized labor. This act, which was aimed directly toward weakening labor in its relations with employers, is deeply resented as legislation written by and for labor's enemies.

Now, through this legislation presently under consideration, it is proposed to go far beyond the Taft-Hartley Act itself in an attack on the trade unions of working men and women of America. Now it is proposed to complete the emasculation or destruction of labor unions over this entire Nation.

These bills are aimed to rob 60 million workers of their most basic liberties under the pretense that the destruction of freedom is necessary to its preservation.

Mr. HYDE. What basic liberties are you talking about, Mr. Kurzer?

Mr. KURZER. The right to organize, to build a union that will defend them in gaining economic conditions.

Mr. HYDE. The basic liberties you are talking about, then, are the right to organize, for one?

Mr. KURZER. The right of all workers to organize, to build their union, the rights of workers to have liberty and freedom.

Mr. HYDE. You are not talking about the same right, then, that the previous witness was talking about, the right to hold a job?

Mr. KURZER. I am speaking about all rights, sir. It is my opinion that if the labor unions are destroyed, then the workers will have no rights. They will have no economic rights; they will have no political rights; they will have no social rights.

House Joint Resolution 528 provides drastic penalties against organizations found to be Communist infiltrated by the Subversive Activities Control Board set up under the McCarran Act. Such penalties include denial of all rights under the National Labor Relations Act and an order requiring "such organization and its component parts to take the necessary steps to dissolve, liquidate, and wind up its affairs expeditiously." Under this bill, such liquidation may be the inevitable penalty for any association however remote or partial with organizations which are victimized under the McCarran Act.

Under the Constitution of the United States, as it is currently interpreted by the courts of the land, the political freedom of the American people is still fully protected to the point of advocacy of political change by force and violence. This bill would wipe out such freedoms.

Under the McCarran Act, organizations which share some of the legal objectives of the Communist Party are subject to special restraints or penalties as Communist-front or Communist-action organizations.

Mr. HYDE. It is your contention that under the Constitution, as mentioned in the previous paragraph, the Government has no authority to take any steps against anyone who is advocating its overthrow by force or violence?

Mr. KURZER. That is right.

House Joint Resolution 528 would widen the area of such guilt by association to all organizations in the Nation. It would provide for the dissolution of trade unions or any other organization whose program paralleled any aspect of the program of an organization already penalized under the repressive McCarran Act.

Mr. HYDE. Let me ask you this in line with that previous question. Do you think the union should have any right to expel a member who was attempting to overthrow it by force and violence?

Mr. KURZER. Well, Congressman, I may have misunderstood your question.

Mr. HYDE. You said you thought that under our Constitution, the Government had no power to protect itself at all against anyone who was advocating its overthrow through force and violence. Do you think a union should have the right to take any action against any member who is attempting to dissolve it or overthrow it through force or violence?

Mr. KURZER. As to the first question, Congressman, it is my understanding that we have a Smith Act which provides that there shall be penalties for anyone advocating——

Mr. HYDE. I know, Mr. Kurzer, but you just said a moment ago——

Mr. KURZER. I misunderstood your question a moment ago.

Mr. HYDE. You said here in this second paragraph on page 3:

> Under the Constitution of the United States, as it is currently interpreted by the courts of the land, the political freedom of the American people is still fully protected to the point of advocacy of political change by force and violence.

Mr. KURZER. That meant up to that point.

Mr. HYDE. Pursuant to that I asked you whether or not you thought the Government had any constitutional power to take any action against anyone who was advocating its overthrow through their force or violence. You said no, did you not, you did not think it did.

Mr. KURZER. I am very sorry, Congressman, but I misunderstood your question. According to this paragraph when we say here "to the point of advocacy of political change by force or violence," it means up to that point.

Trade unions by their very nature are organizations of workers established for the purpose of seeking redress of grievances. Their essential purpose is economic, social, and political change. They seek such changes in the wages, hours, and working conditions of their members. They support certain legislation and oppose other legislative proposals, such as the bills under consideration by this committee today. If you deny unions the right to seek objectives which may also from time to time be supported by other organizations, you are in fact nullifying their whole purpose and reason for existence.

House Joint Resolution 528 in effect outlaws the whole program of organized American workers on the grounds that labor's program coincides at some points with the clearly legal objectives of organizations alleged under the McCarran Act to be guilty of other and illegal objectives.

Accordingly, this is a bill to place labor in a legal straitjacket, in which every move taken will be at the risk of total destruction.

Consider for a moment how this legislation might be applied in practice. The Communist Party in the United States opposes segregation and discrimination against the Negro people. This position is shared also by a number of non-Communist organizations. Under the McCarran Act, thought-control and guilt-by-association principles may be applied to condemn such non-Communist organizations as Communist-action organizations.

Mr. HYDE. Mr. Kurzer, have you ever known of any organization which advocated any dissolution of an organization because it had the label as a Communist organization?

Mr. KURZER. I am going to go on, Congressman, and prove that under this legislation as being proposed, even the Supreme Court of the United States could be ordered to dissolve. If you will permit me, I am coming to that right now.

Under House Joint Resolution 528 this nightmare political logic is carried one step further. Any organization which shared the anti-segregation principles in whole or in part with these non-Communist organizations could be termed "Communist infiltrated."

Fantastic though it may be, this logic could even be applied to justify an action calling on the Supreme Court of the United States to "dissolve, liquidate, and windup its affairs expeditiously."

Mr. HYDE. Where is the language of the bill that says that, Mr. Kurzer, in 528?

Mr. KURZER. I am coming to that, Congressman; I am dealing with that now.

For the Supreme Court of the United States had advocated and acted for the end of segregation in American schools. Unquestionably, under this bill, this could be considered the use of "funds, resources, and personnel" to further or promote the "objectives" of a—

Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act (H. J. Res. 528, sec. 4 (4) (2)).

This would also make the United States Supreme Court guilty under section 4 (d) (3) of House Joint Resolution 528. Its positions on segregation "do not deviate from those taken" by organizations vulnerable under the McCarran Act. It will be remembered that Senator James O. Eastland, of Mississippi, charged that subversive influences were behind the Supreme Court's antisegregation decision.

The sweeping political definitions of House Joint Resolution 528 would provide the catchall net with which any union in the Nation could be subject to trial at the whim of an Attorney General and to final condemnation by the prejudice of appointive officials with long records of antagonism to organized labor.

Labor organizations, as stated above, are devoted to the achievement of improved hours, wages, and working conditions. These come sometimes at the expense of the profits of employers, and the history of American labor is marked by a series of sharp conflicts with employers, conflicts which have often erupted into the intense and bitter strike struggles.

During the past two decades labor has worked and campaigned for unemployment compensation, minimum-wage legislation, full employment, progressive taxation, and fair employment practices. These were also part of the legislative program of the Communist Party. Because of this, any labor organization would automatically be open to attack if House Joint Resolution 528 were to become law.

Further, if this bill becomes law, a labor organization could be fully secure only if it abandons the interests of the workers to become a company union. It could be safe only if it submits all names of officers, organizers, business agents, shop stewards, and convention delegates to the employers for approval or veto. No union could be safe, unless it was a union chosen by the employer rather than the worker. The Wagner Act principle of collective bargaining by workers through unions of their own choosing would be reversed to collective bargaining through unions of the employer's choosing.

Not a grievance could be handled, not a contract negotiated, not a strike conducted or a petition addressed to Congress without some fear of reprisals under this legislation. For all labor, substantial losses in bargaining strength would be immediate.

The very preamble of the American Federation of Labor constitution is couched in language which has been described by the Department of Justice expert under oath in a Federal courtroom as from the "Communist Manifesto." It reads:

> A struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries, a struggle between the capitalist and the laborer which grows in intensity from year to year and will work disastrous results for the toiling millions if they are not combined for mutual protection and benefit.

Would not the members of the Internal Security Board describe that as the "Marxist-Communist doctrine of the class struggle?" How, with that as its key principle, can this major center of American labor escape condemnation under this bill as sharing Communist-front objectives?

As for the CIO, that organization was described scarcely less than 2 years ago by the United States Chamber of Commerce as follows:

> In spite of a partial house cleaning, the CIO has never rid itself of its Marxist economics. Virtually every important speech and publication, instead of being designed to improve the position of the workers, is replete with class consciousness, hatred for employers, and is designed to further and intensify the class struggle—things foreign to most Americans.

Obviously, House Joint Resolution 528 would also endanger CIO. Already it stands condemned by the leading employer groups as sharing Communist objectives. The lying testimony of a few planted labor spies could complete the picture of its guilt under this bill.

No union could escape the executioner's ax under this bill once employers and antilabor Government officials launch a determined attack.

Any union forced into an industrial dispute or strike would find itself dangerously vulnerable under this bill. If an Attorney General could be persuaded to open action against it, such a union would be subject to interminable harassment and attack. (And the current Attorney General, it may be remembered, did not allow his discretion to stand in the way of denouncing a former President of the United States as a "promoter of spies.")

Its books and records could be subpenaed, and its officers tied up in endless hearings, while direct attacks from employers undermined its basic strength. Its entire leadership could be removed by action of the Board for the long months while an appeal from an unfavorable Board decision is carried through the courts for reversal.

House Joint Resolution 528 makes all unions especially vulnerable to the work of labor spies and agents of the employers. Their testimony before the Board under the catchall tests of this bill and the indefinable political standards which it imposes could convict any union or any organization—once employers had determined that such a conviction was desirable.

Such things are not the result alone of the vague and ambiguous terminology which marks all the provisions of this bill. They flow from any imposition of any political test or system of political licensing for the organization of workers and people in America. If workers are denied the right to elect their leaders freely on the basis of their own needs and experiences, they are denied control of their own unions. Their unions become wards and hostages to the state, operated not by and for workers but by the political party currently holding power.

My own personal experience in the Fur and Leather Workers Union has taught me what democracy in action—which would be totally nullified by House Joint Resolution 528—really means. In our union there is the fullest democracy and the protection of the rights of all members. Our officers are elected and our policies established on the basis of full, free, and democratic discussion with the rights of all—particularly those who may be in a minority position—fully maintained.

We choose our officers on the basis of the work they have done and their capacity for leadership. We choose them on the basis of their sincerity, honesty, and ability to serve labor and the people in America. We impose no bars of race, creed, politics, or religion to keep from office or leadership any worker who has proved he can contribute to the organization. We cherish these rights, and we have fought to protect them.

These democratic policies of my union may have resulted in the election of officers who are not the choice of fur and leather industry employers. But it has guaranteed a leadership which has won unequalled gains for 100,000 members of my union and their families. Through such democracy in action we have contributed significantly, not only to the welfare of the Nation and security of our members, but to that of their communities and the Nation.

In the years of united and democratic leadership in our union, our members have won for fur workers a 35-hour week with wages and working conditions unequalled anywhere in American industry; organized the 50,000 tannery workers for the first time in history into a powerful and effective union; advanced leather workers, once among the lowest paid groups in industry, to wage levels of $1.90 and $2 an hour; opposed all forms of racial discrimination, anti-Semitism, and other attacks on the basic principles of American democracy; carried forward a brilliant record of service to the Nation and the cause of democracy in times of war and peace.

Mr. HYDE. Mr. Kurzer, we appreciate the things that you have done for the workers, but you are limited in time so I suggest you might get down to the bill itself and give us the benefit of your testimony regarding the language of the bill, the dangers, and other things.

Mr. GRAHAM. Mr. Kurzer, before you again go on, please, I was just about to call attention to the very thing Mr. Hyde was. We have your statement in the record, we will consider it and go over it. You are simply reading this, and if you will emphasize the particular points you want us to consider, we will be glad to do so.

Mr. KURZER. Congressman, may I say this. This was prepared with a lot of difficulty by a number of people, including myself.

Mr. GRAHAM. So was every other statement which has been submitted—some of them splendid, fine legal expositions—we consider them all. Your statement is in the record. Why do you want to take up our time?

Mr. KURZER. Congressman, I know earlier you said you were concerned about the representatives of fur and leather not coming back to Washington again.

Mr. GRAHAM. Just a minute, if you are going to insist on it, we are going to walk out on you at 12:35. I will tell you right now so you will know where we are.

If you want to continue reading we will listen. We have other work to do.

Mr. KURZER. Congressman, I cannot see how this can be condensed any further than it is right now. We have boiled it down to essentials.

Mr. WALTER. It is now nothing but a stump speech. If you were to employ the methods that the American Communications Association did, we would get somewhere. That is the kind of intelligent discussion of legislation that means something.

Mr. KURZER. I agree, sir, that the brief of the Communications Association is an excellent brief job and I join you in your opinion.

Mr. GRAHAM. We have other things to do and we have been very patient. I gave you the time. I tried to be absolutely fair. You are here from a distance and we wanted to hear you. Twice we have warned you to come down to the point, but you keep going over the statement and what we want you to do is point out where you think these two bills are unconstitutional. You point that out, and your attorney.

Mr. KURZER. Sir, I am here at the instruction of a union of 100,000 members.

Mr. GRAHAM. Your union is not running us. Get that into your head.

Mr. KURZER. In 45 minutes, sir——

Mr. GRAHAM. The hearing is closed. This morning the National Lawyers Guild was heard from 9:50 to 10:30, 40 minutes. Representative Herman P. Eberharter of Pennsylvania was heard from 10:30 to 11:10. The American Communications Association got the shortest time of all. They went from 11:10 to 11:20—from 11:20 to 12:05. Mr. Kurzer with the International Fur and Leather Workers went from 12:05 to 12:27. We had scheduled Mr. Russel Nixon of the United Electrical, Radio and Machine Workers, who was cut off the other day and was invited back today. It will be impossible, Mr. Nixon, to hear you at this time.

We will go over to Wednesday. Justice Musmanno wants to be heard. The CIO wishes to be heard. Mr. Nixon wishes to be heard. Mr. Nixon, can you give me an idea of the time you will take on Wednesday, so we can gage it accordingly?

Mr. NIXON. I took about an hour and 15 minutes the other day, sir. A large amount of that time was taken by questioning of the committee, as you recall. As far as my part of the presentation is concerned, I am sure that I can complete my summary within a half hour. I cannot of course speak for how much questioning there may be from the committee.

Mr. GRAHAM. Then on next Wednesday Mr. Nixon will come first and get 30 minutes.

Mr. NIXON. That is for my presentation, sir, you are talking about?

(The complete prepared statement of Mr. Kurzer is as follows:)

STATEMENT OF INTERNATIONAL FUR AND LEATHER WORKERS UNION OF THE UNITED STATES AND CANADA IN OPPOSITION TO BROWNELL-REED BILLS HOUSE JOINT RESOLUTION 527 AND HOUSE JOINT RESOLUTION 528 TO PROVIDE GOVERNMENT LIQUIDATION OF SELECTED ORGANIZATIONS AND GENERAL BLACKLISTING OF WORKERS

Presented to the House Judiciary Committee, Subcommittee No. 1, by International Executive Board Member Herbert Kurzer, June 25, 1954

My name is Herbert Kurzer. I am an elected official of local 125 of the International Fur and Leather Workers Union, whose office is located at 250 West 26th Street in New York City. My testimony in opposition to House

Joint Resolutions 527 and 528 is on behalf of the International Fur and Leather Workers Union which is the bargaining agency for 100,000 workers in the fur and tanning industries of the United States and Canada. The union for which I speak was first established in 1914 and today enjoys stable bargaining relations with all employers of the fur industry and with corporations employing 90 percent of the production workers of the leather industry.

I am here to state the opposition of my union to House Joint Resolution 528, which would give the Subversive Activities Control Board, set up under the McCarran Act, power to destroy any union in the country.

I am here also to state my union's opposition to House Joint Resolution 527, which would turn over to the Executive the power to fire and blacklist workers in all American industry.

For more than 200 years, employers and their agents who opposed the right of workers to join unions of their own choosing and to bargain collectively for better hours, wages, and working conditions have claimed to find in such activity a sinister and subversive plot against the established order. In the late years of the 18th century, cordwainers, bricklayers, and carpenters who sought a work day shorter than the established span of hours between sunrise and sunset were described as Jacobins and Republicans, seeking to repeat in America the terror of the French guillotine.

Labor's drive through the 19th century for the rudiments of collective bargaining brought from the employers of the time outcries that such activity was "anarchistic," "socialist," or directly linked to the "Paris Commune." Resistance to unions and to workers' justified demands was always covered up by pretended patriotic motives in defense of the national welfare.

In the summer of 1886, for instance, the Boot & Shoe Manufacturers Association of New England described Massachusetts leather workers on strike against their employers as "vicious men led by Communists and anarchists from abroad who are seeking to disturb the peace, destroy the industrial prosperity of the community, and establish a Communist regime in New England." That the leather workers wanted wage increases, the employers' association did not find worthy of mention.

The attacks on labor after the First World War followed the same pattern, when labor's campaigns for the 8-hour day were met with outcries against syndicalism and bolshevism. Employers of the 1930's explained their millions of dollars spent for labor spies and weapons of industrial warfare as required for a crusade against "sabotage and communism." A pamphlet entitled, "Join the CIO and Build a Soviet America," was widely circulated. Such demagogs as Gerald L. K. Smith and Charles E. Coughlin proclaimed loudly their discoveries that rubber workers, steel workers, and auto workers in building a union were directly and treasonably serving as agents of the Kremlin.

Today, for the first time in history, such employer propaganda is embodied in legislation before the Congress. And for the first time in history, it is proposed to make such propaganda attacks grounds for the actual dissolution of any labor union in America.

This is the substance and objective of House Joint Resolutions 527 and 528.

This is also the nub of the Goldwater-Rhodes, Butler-Miller, and McCarran proposals for applying capital punishment to a union for the purported political beliefs or associations of any one or more of its active members. (That such a procedure is in flagrant violation of the Constitution has already been testified to by others at these hearings.)

Madam and gentlemen, there is tremendous resistance to the Taft-Hartley Act from the leadership and the ranks of organized labor. This act, which was aimed directly toward weakening labor in its relations with employers, is deeply resented as legislation written by and for labor's enemies.

Now, through this legislation presently under consideration, it is proposed to go far beyond the Taft-Hartley Act itself in an attack on the trade unions of working men and women of America. Now it is proposed to complete the emasculation or destruction of labor unions over this entire Nation.

These bills are aimed rob 60 million workers of their most basic liberties under the pretense that the destruction of freedom is necessary to its preservation.

House Joint Resolution 528 provides drastic penalties against organizations found to be "Communist infiltrated" by the Subversive Activities Control Board set up under the McCarran Act. Such penalties include denial of all rights under the National Labor Relations Act and an order requiring "such organization and its component parts to take the necessary steps to dissolve, liquidate, and wind up its affairs expeditiously." Under this bill, such liquidation may

be the inevitable penalty for any association however remote or partial with organizations which are victimized under the McCarran Act.

Under the Constitution of the United States, as it is currently interpreted by the courts of the land, the political freedom of the American people is still fully protected to the point of advocacy of political change by force and violence. This bill would wipe out such freedoms.

Under the McCarren Act, organizations which share some of the legal objectives of the Communist Party are subject to special restraints or penalties as "Communist-front" or "Communist action" organizations.

House Joint Resolution 528 would widen the area of such guilt by association to all organizations in the Nation. It would provide for the dissolution of trade unions or any other organizations whose program paralleled any aspect of the program of an organization already penalized under the repressive McCarran Act.

Trade unions by their very nature are organizations of workers established for the purpose of seeking redress of grievances. Their essential purpose is economic, social, and political change. They seek such changes in the wages, hours and working conditions of their members. They support certain legislation and oppose other legislative proposals, such as the bills under consideration by this committee today. If you deny unions the right to seek objectives which may also from time to time be supported by other organizations, you are in fact nullifying their whole purpose and reason for existence.

House Joint Resolution 528 in effect outlaws the whole program of organized American workers on the grounds that labor's program coincides at some points with the clearly legal objectives of organizations alleged under the McCarran Act to be guilty of other and illegal objectives.

Accordingly, this is a bill to place all labor in a legal straitjacket, in which every move taken will be at the risk of total destruction.

Consider for a moment how this legislation might be applied in practice. The Communist Party in the United States opposes segregation and discrimination against the Negro people. This position is shared also by a number of non-Communist organizations. Under the McCarren Act, thought-control and guilt-by-association principles may be applied to condemn such non-Communist organizations as Communist-front or Communist-action organizations.

Under House Joint Resolution 528, this nightmare political logic is carried one step further. Any organization which shared the antisegregation principles in whole or in part with these non-Communist organizations could be termed "Communist-infiltrated."

Fantastic though it may be, this logic could even be applied to justify an action calling on the Supreme Court of the United States "to dissolve, liquidate, and wind up its affairs expeditiously." For the Supreme Court of the United States had advocated and acted for the end of segregation in American schools. Unquestionably, under this bill, this could be considered the use of funds, resources, and personnel to further or promote the objectives of a "Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act" (H. J. Res. 528, sec. 4 (d) (2)).

This would also make the United States Supreme Court guilty under section 4 (d) (3) of House Joint Resolution 528. Its positions on segregation do not deviate from those taken by organizations vulnerable under the McCarran Act. It will be remembered that Senator James O. Eastland of Mississippi charged that subversive influences were behind the Supreme Court's antisegregation decision.

The sweeping political definitions of House Joint Resolution 528 would provide the catchall net with which any union in the Nation could be subject to trial at the whim of an attorney general and to final condemnation by the prejudice of appointive officials with long records of antagonism to organized labor.

Labor organizations, as stated above, are devoted to the achievement of improved hours, wages, and working conditions. These come sometimes at the expense of the profits of employers. The history of American labor is marked by a series of sharp conflicts with employers, conflicts which have often erupted into the intense and bitter strike struggles.

During the past two decades, labor has worked and campaigned for unemployment compensation, minimum wage legislation, full employment, progressive taxation, and fair-employment practices. These were also part of the legislative program of the Communist Party. Because of this, any labor organization would automatically be open to attack if House Joint Resolution 528 were to become law.

Further, if this bill becomes law, a labor organization could be fully secure only if it abandons the interests of the workers to become a company union. It could be safe only if it submits all names of officers, organizers, business agents, shop stewards, and convention delegates to the employers for approval or veto. No union could be safe, unless it was a union chosen by the employer rather than the workers. The Wagner Act principle of collective bargaining by workers through unions of their own choosing would be reversed to collective bargaining through unions of the employer's choosing.

Not a grievance could be handled, not a contract negotiated, not a strike conducted or a petition addressed to Congress without some fear of reprisals under this legislation. For all labor, substantial losses in bargaining strength would be immediate.

The very preamble of the American Federation of Labor constitution is couched in language which has been described by a Department of Justice expert under oath in a Federal courtroom as from the Communist Manifesto. It reads:

"A struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries, a struggle between the capitalist and the laborer which grows in intensity from year to year and will work disastrous results for the toiling millions if they are not combined for mutual protection and benefit."

Would not the members of the Internal Security Board describe that as the Marxist-Communist doctrine of the class struggle? How, with that as its key principle, can this major center of American labor escape condemnation under this bill as sharing Communist-front objectives?

As for the CIO, that organization was described scarcely less than 2 years ago by the United States Chamber of Commerce as follows:

"In spite of a partial house cleaning, the CIO has never rid itself of its Marxist economics. Virtually every important speech and publication, instead of being designed to improve the position of the workers, is replete with class consciousness, hatred for employers and is designed to further and intensify the class struggle—things foreign to most Americans."

Obviously, House Joint Resolution 528 would also endanger CIO. Already it stands condemned by the leading employer groups as sharing Communist objectives. The lying testimony of a few planted labor spies could complete the picture of its guilt under this bill.

No union could escape the executioner's ax under this bill once employers and antilabor Government officials launch a determined attack.

Any union forced into an industrial dispute or strike would find itself dangerously vulnerable under this bill. If an attorney general could be persuaded to open action against it, such a union would be subject to interminable harassment and attack. (And the current Attorney General, it may be remembered, did not allow his discretion to stand in the way of his denouncing a former President of the United States as a promoter of spies.) Its books and records could be subpenaed, and its officers tied up in endless hearings, while direct attacks from employers undermined its basic strength. Its entire leadership could be removed by action of the Board for the long months while an appeal from an unfavorable Board decision is carried through the courts for reversal.

House Joint Resolution 528 makes all unions especially vulnerable to the work of labor spies and agents of the employers. Their testimony before the Board under the catchall tests of this bill and the indefinable political standards which it imposes could convict any union or any organization—once employers had determined that such a conviction was desirable.

Such things are not the result alone of the vague and ambiguous terminology which marks all the provisions of this bill. They flow from any imposition of any political test or system of political licensing for the organization of workers and people in America. If workers are denied the right to elect their leaders freely on the basis of their own needs and experiences, they are denied control of their own unions. Their unions become wards and hostages to the state—operated not by and for workers but by the political party currently holding power.

My own personal experience in the Fur and Leather Workers Union has taught me what democracy in action—which would be totally nullified by House Joint Resolution 528—really means. In our union there is the fullest democracy and the protection of the rights of all members. Our officers are elected and our policies established on the basis of full, free, and democratic discussion with the rights of all—particularly those who may be in a minority position—fully maintained. We choose our officers on the basis of the work they have done and their capacity for leadership. We choose them on the basis of their sincerity, honesty,

and ability to serve labor and the people in America. We impose no bars of race, creed, politics, or religion to keep from office or leadership any worker who has proved he can contribute to the organization. We cherish these rights, and we have fought to protect them.

These democratic policies of my union may have resulted in the election of officers who are not the choice of fur and leather industry employers. But it has guaranteed a leadership which has won unequalled gains for 100,000 members of my union and their families. Through such democracy in action we have contributed significantly, not only to the welfare and security of our members, but to that of their communities and the Nation.

In the years of united and democratic leadership in our union, our members have won for fur workers a 35-hour week with wages and working conditions unequalled anywhere in American industry; organized the 50,000 tannery workers for the first time in history into a powerful and effective union; advanced leather workers, once among the lowest paid groups in industry, to wage levels of $1.90 and $2 an hour; opposed all forms of racial discrimination, anti-Semitism, and other attacks on the basic principles of American democracy; carried forward a brilliant record of service to the Nation and the cause of democracy in times of war and peace.

The record of my union, like that of labor generally, is one of continued effective service to the welfare of the Nation. It is typical of American unions, many of which have been subjected to certain special attacks by employers and management-minded Government officials.

Constructive and truly American work for the strengthening of our democracy has been and continues to be the basic contribution of organized labor in this Nation. Let me declare upon the record that the purported association of American unions with sabotage and espionage, which is the foundation principle of House Joint Resolution 528, is a poisonous and total lie. In the period of the Finnish-Soviet War, in the period of World War II, in the period of conflict in Korea, and in the current time of tension over Indochina there is, so far as we have been able to discover, not one single charge of union-connected sabotage or espionage.

The false association of unions with such acts constitutes direct slander and insult against the organizations of more than 15 million American workers.

Such slanders in this bill, obviously, are aimed at labor alone rather than corporations.

Has it ever been proposed that the General Motors Corp. be outlawed because certain of its officers were affiliated at one time with an anti-Government political sect known as the American Liberty League * * * or the Ford Motor Co. be dissolved for its long years of association with anti-Semitic Nazis?

Has it ever been proposed that the Standard Oil Co. of New Jersey be forthwith liquidated because of its admitted association with Nazi cartels—or that the General Electric Corp. be outlawed for its prewar arrangements with the Nazi Krupp Co. on the maintenance of price levels for tungsten carbide. Has it ever been proposed that a Lindbergh or Hearst, who took medals from Hitler, be subjected to any punishment.

Such proposals against one side of the collective bargaining table seem to verge on the fantastic * * * though history records actual sabotage to the defense of the United States through these associations and political affiliations of big business.

For the workers' side of the bargaining table, House Joint Resolution 528 holds out a death sentence to any union in the country containing an articulate member who once signed a petition against lynching or attended a meeting on unemployment, or for that matter opposed these bills—merely because other organizations also took such action.

House Joint Resolution 527 would apply the principles of House Joint Resolution 528 for the drastic punishment not of organizations but of individual workers. Under its terms, the Executive is given a blank check to apply to any worker anywhere in industry the most drastic economic punishment a wage earner and his family can suffer—discharge and blacklisting from all American industry.

The premise of 527, like that of 528, is an open insult to American workers. It is the assumption that espionage and sabotage are rife among them. It ignores the statement of then Attorney General Tom Clark in 1946 that, "During the war years not a single enemy-inspired act of sabotage was committed in America." (Attorney General's Annual Rept. No. 10, 1946, p. 542.) It ignores even the words of J. Edgar Hoover that there was no indication of "any successful foreign-directed act" of sabotage in World War II (quoted in NICB Rept. No. 60,

p. 50). It ignores the very substantial and rigidly applied security measures which are now in force over military production or so-called sensitive activities.

House Joint Resolution 527 ignores these things because its real aim is not to prevent possible sabotage and espionage, but to regiment American workers.

By giving the Executive—presumably the Attorney General—broad and totally undefined powers to punish at will any and all workers in American industry on suspicion of subversion, it creates the most dangerous threat to the economic security and political freedom of American workers ever proposed in the history of the Nation.

What the real goals of House Joint Resolution 527 may be are sharply suggested by the report of an earlier committee of the Senate. Reported the Senate Committee on Labor and Education in 1938 (Violations of Free Speech and Rights of Labor, Rept. No. 46, pt. 3, pp. 9–10):

"The chief reasons advanced by employers and detective agency officials for the use of labor spies were: (1) Protecting industry against radicalism and communism; (2) preventing sabotage (closely linked to the first); (3) detecting graft; (4) improving efficiency in methods and workers; merging into (5) improving relations between employers and workers, or 'human engineering.' These 'legitimate' reasons for the employment of labor spies were strenuously advanced by officials of the detective agencies and, with diminished enthusiasm, by representatives of industry. These 'reasons' were of so little merit that after examination by the committee they were repudiated by the same officials who advanced them. They are, however, interesting to examine for the light they shed on the actual motive.

"No employer seriously defended his use of labor spies by the well-worn excuse of a crusade against radicalism and sabotage. The Pinkerton and Burns officials, on the other hand, regarded ferreting out radicals as their private and real endeavor. The committee's attention was particularly drawn to the manner in which industrial or labor work was recorded on the journals of the Pinkerton's National Detective Agency. Entry after entry in their books designating the purpose of the case read: 'Investigation of radical conditions,' often coupled with 'investigation of theft, sabotage, and irregularities,' followed by the designation of the operative and the rate of pay.

"On preliminary examination the Pinkerton officials steadfastly maintained that these entries meant what they said—investigations of theft and sabotage, usually linked by them with radicalism. It was not until the committee laid bare the whole story of industrial espionage that the general manager of the Pinkerton agency reluctantly admitted that the entries actually concealed spying on union organizations:

" 'Senator La Follette. Now, Mr. Rossetter, isn't it true that the description in the Pinkerton journal of sabotage, theft, and irregularities often actually covers up investigation to be made of union activities? * * *

" 'Mr. Rossetter. Well, if you take that as a sample, I will have to say "Yes" to it, * * *.'

"This admission was confirmed by L. L. Letteer, formerly assistant superintendent of the Atlanta, Ga., office of the agency.

" 'Senator La Follette. And what was the usual practice when you mentioned industrial espionage on the ledger sheet? What was the usual practice?

" 'Mr. Letteer. That would usually be written up as possible radical activities.

" 'Senator La Follette. Even though the organization was being attempted by a so-called, or as you have described it, a bona fide labor organization?

" 'Mr. Letteer. That is right.

" 'Senator La Follette. So that really was a cover, wasn't it?

" 'Mr. Letteer. Well, it was used as a convenient title for most any form of labor investigation.' "

An analysis of the provisions of House Joint Resolution 527 shows it to be the perfect instrument for doing the job which the Pinkertons failed to accomplish 20 years ago.

To begin with, its provisions can be made applicable at the whim of the executive, as is clearly indicated by the decree powers given under section 3 (a) of the bill. These include the right to apply the drastic provisions of the act under such vague conditions as "subversive activity, disturbance, or threatened disturbance of international relations."

(When in past centuries have no threats of "disturbance in international relations" existed?)

These powers are to be exercised over defense facilities designated at the will of the Secretary of Defense under the Internal Security Act of 1950 (sec. 3 (d)).

A rumor, a piece of malicious gossip, the false report of a labor spy, the ill will of the employer arising out of collective-bargaining disagreements, an opposition political opinion, or the remote shadow of some long-forgotten guilt by association—could serve under this act to bring economic disaster to a worker and his family.

Any chance word or act reported or distorted to the authorities would serve to bring permanent unemployment. The more active workers who provide shop leadership for unions would be specially victimized by these inquisitorial procedures. For all workers this act would bring intimidation and terror.

As the National Industrial Conference Board advised its big-business members in its confidential report No. 60, page 5:

"A real foreign agent doesn't advertise the fact. If you have one, he is probably one of the best workers on your force. * * *

"But even if you don't have a trained saboteur in hire, industrial security can pay off in peacetime. It can help you rid your plant of agitators who create labor unrest, who promote excessive grievances, slowdowns, and strikes, and encourage worker antipathy toward management."

In other words, according to this authoritative employer source, an industrial-security program pays off in the taming or breaking of unions.

House Joint Resolution 527 is crystallization of the National Industrial Conference Board's proposals. It would put the Government of the United States in the union-smashing business.

Are members of our union incorrect in thinking that House Joint Resolutions 527 and 528 are aimed deliberately to produce unions run by and for the employers rather than the workers they are presumed to serve?

Is not the formula of these bills the exact formula by which the powerful organizations of German labor were coordinated after 1932 into the labor front of Robert Ley and Adolf Hitler? Under that labor front, unions were continued * * *. Just a few details were changed * * *. Unions which were critical of Nazi policies were dissolved and their properties taken over. Workers were free to elect their own officials, provided, of course, that their names had first been approved by the Nazis and the employer. And any worker who voiced a political doubt or became a security risk by reason of past political association, race, religion, or antipathy toward management was quickly discharged and placed behind the barbed wire of a concentration camp.

In what essential does this legislation differ from the labor policies of the Hitler regime? What essential liberties would it leave American workers above and beyond the slavery suffered by German workers under the Nazis?

This grim prospect cannot be hidden by any amendments to House Joint Resolution 527 or 528 aimed to eliminate their cruder aspects or to conceal more cleverly the traps for all labor now openly displayed in their provisions.

By necessity, if you give any Government board power to outlaw a union because of the political ideas or association of its members or officers, you are wiping out the most basic protection to the welfare and the living conditions of workers everywhere. By necessity, if you give Government boards the right to punish workers on the shadow of a suspicion, freedom from fear has been ended for all Americans.

The effect of this legislation would be disastrous not only to labor but to the very fabric of Americanism itself. It is a gun leveled straight at the heart of American democracy. How can freedom live in this country if workers lose the right to assemble peaceably in organizations of their own choosing to petition for redress of grievances? How can constitutional rights live for workers who are to be placed under the shadow of constant surveillance and drastic penalties applied by employers and Government agencies?

Some years ago the late Philip Murray, president of CIO, branded the Taft-Hartley Act as a step in the direction of fascism. More recently, John L. Lewis termed the same legislation "the first ugly, savage thrust of fascism in America."

These bills are no step or thrust toward fascism. They are the very essence of fascist machinery itself. They propose pure, simple, and undiluted economic, social, and political dictatorship from which 60 million Americans could disentangle themselves only at the end of a long and tragic period of social turmoil.

In 1952, an administration was elected to office pledged to "fair reforms" of the Taft-Hartley Act. Is this crushingly destructive and repressive legislation to be the delivery on those promises of fair play for labor made by Republican candidates in 1952?

Throughout the Nation, I can tell you, workers and their families and their communities are worried and concerned these days. Unemployment is mounting. Inventories are still piled high. Sales of goods show no sign of an upturn. There is fear and resentment. Let me urge you to heed these things, gentlemen, and to turn your attention to the dangers the American people really face in this year 1954.

Perhaps American workers are not specialists in the intricacy of labor legislation or the complexity of abstract political theories. But they are deeply alive and sensitive to their welfare and their dignity as human beings, and profoundly democratic in their response to the issues of American life.

For a while the purposes of this legislation may be covered by hysteria—it may be packaged away in layers of demagogy. It may be tinseled and goldbricked by all the devices of hucksterism. But I testify without hesitation that working men and women in this country will surely understand what it means for them.

They will see in this legislation an effort to take from them the wages, the security, and the rights which they won only because they had powerful unions independent of control either by employers or Government officials. It will be a sign to them that those who now hold political and economic power do not dare to trust the democratic wisdom and votes of the millions of the American people.

House Joint Resolutions 527 and 528 insult every wage and salary earner in the Nation. Such insults will be neither misunderstood nor ignored.

These bill would declare to the world that American workers can be kept from espionage, sabotage, and violent attempts to overthrow our Government only by a system of repression which would jettison every right and liberty of the Nation's Constitution.

Let me urge you gentlemen to establish once and for all the right of American workers to build and run unions of their own—to elect their leaders without interference or any system of licensing by a Government board. In these days of giant corporations and mass industries that right is the key to all democratic rights for the bulk of the American people. Once you take away from a worker the right to choose a union—to choose his associates—to elect men to office on the basis of his own judgment—you have robbed him of the whole body of his democratic rights. You have in fact doomed him to a condition of involuntary servitude. You have brought fear, suspicion, and resentment into every minute of his life. You have reduced him to industrial serfdom—and I declare that whoever seeks to do that to American workers will learn the impact of their true power.

As the late Allan S. Haywood of CIO said in describing legislation much less drastic than these proposals:

"Once the gate is open to Government proscribing of unions, the temptation will be open to use any device to destroy any union with whose objectives the administration in power may not happen to agree."

Resistance to that legislative "temptation" is called for. Only through such resistance can the right of the average American be protected. Only by it can the basic rights of the Constitution itself be upheld.

We urge that the attention of the Congress be directed toward a solution of the real problems faced by the American people at home. These measures, and not the creation of a Nazi-style labor front with day-by-day terror for American workers, are the path for the strengthening of American democracy.

What is needed is a reassertion through the Congress of freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want, and freedom from fear.

These are the elements for the real strengthening of American democracy and American security.

We ask your rejection of House Joint Resolutions 528 and 527 and like legislation which would put this Nation on the road of fascism which other nations have followed to disaster. We ask your support to constructive measures needed by the workers and people of America.

Mr. GRAHAM. The committee stands adjourned until next Wednesday at 9:30 a. m.

(Whereupon, at 12:32 p. m. the committee adjourned, to reconvene on Wednesday, June 30, 1954, at 9:30 a. m.)

INTERNAL SECURITY LEGISLATION

WEDNESDAY, JUNE 30, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

Subcommittee No. 1 met, pursuant to call, at 9:30 a. m., in room 346, House Office Building, Hon. Louis E. Graham, chairman of the subcommittee, presiding.

Present: Representatives Graham, Thompson, Hyde, Celler, and Walter.

Also present: Walter M. Besterman, legislative assistant; William R. Foley, committee counsel; William P. Shattuck, assistant committee counsel.

Mr. GRAHAM. The committee will be in order.

We arranged that Mr. Nixon shall come first. He has half an hour. Mr. Nixon, you may proceed.

STATEMENT OF RUSSELL NIXON, WASHINGTON REPRESENTATIVE, UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS, WASHINGTON, D. C.

Mr. NIXON. Mr. Chairman, I was interrupted with the termination of the hearing on Wednesday, and I had completed not quite 4 pages of my statement. That occurred because I think I was the first witness to talk about this subject.

Mr. GRAHAM. You may proceed until you are through.

Mr. NIXON. I had not completed my summary description of the legislation, although I had discussed the first bill, House Joint Resolution 528, and started to discuss the second bill, which has to do with screening. I want to make this point with regard to the screening bill. In some way the problems of this legislation and the opposition to it are made clear by a series of questions that I think should be very seriously raised before this committee. One applies to the question of when shall this provision for screening be put into effect.

The language of the bill says it will be put into effect "whenever there is a threatened subversive activity or disturbance or threatened disturbance of international relations."

I ask the question, What does that mean? Certainly doesn't that mean the present time? I asked the question, Has there been any time in the last 20 years in which this definition could not be said to be applicable? In other words, the provisions of the bill provide for this whole procedure of screening to be put into effect virtually at the complete discretion, without limit, on the part of the President.

The second question I raise is, What about the tests that are to be applied? I ask the committee this question: What is meant by "reasonable ground to believe they may engage in other subversive acts"? Quoting from the bill, what does this phraseology mean? I think it is extremely important that the committee should look into the question of the present screening operation. There is a tremendous amount of opposition to the way the screening system has been operated at the present time. This opposition stems from the fact that, without any question, political tests of the vaguest sort are being applied in the screening process at the present time. As a matter of fact, Mr. Chairman, since I last appeared, I read an excellent account of this subject in the magazine known as the Reporter, dated July 6, entitled "Labor Unions and Security Risks," by John Warner.

If it is agreeable to you, I would like to put that in the record, since I think it might help the committee in this screening question.

Mr. GRAHAM. That may be done.

(The article referred to follows:)

[From the Reporter, July 6, 1954]

LABOR UNIONS AND "SECURITY RISKS"

(By John Warner)

(The identities of all the workers and labor-union officials quoted or referred to in the following article have been disguised by the author at their request. No man wishes to tempt the investigating committee's subpena or the clearance board's inquiry. These good union men are used to standing up to be counted on hot issues. Thus their desire for anonymity in this instance indicates the impact of the present preoccupation with security on an important part of our population.)

Mike is a man who honestly describes himself as a "very controversial figure." He is a bluff and rugged natural leader with impulsive determination and an explosive personality. Though these characteristics have gotten him into many scrapes in unions and with management, he was utterly unprepared for what happened to him just after the first of this year, when he was notified that the Government refused to give him clearance for sensitive work in the defense plant where he was employed because of his past associations.

Mike had 10 days in which to file a reply with the regional industrial personnel screening board. He had no idea of the specific charges leveled against him or of who had requested the Government's investigation. Rightly or not, he was suspicious of the company he worked for, some representatives of which had let it be known that he was not the sort of labor leader they liked to deal with, that they did not enjoy having him as one of the top officers in his local union, and that they resented his extreme militancy during a 1952 strike when he even antagonized a few of his fellow workers.

"About a year ago," Mike claims, "the company selected 40 of us out of 1,200 employees to sign what I understood to be a loyalty pledge. You get a lot of stuff to sign these days—you know, routine—and I didn't bother to read it very carefully, just signed it. Figured it was some kind of straight loyalty pledge. Now I'm told it included a request for access to sensitive material."

He offered affidavits from various individuals, including his parish priest, testifying to his good character, his loyalty, and his reliabilty—political and otherwise. But the "first determination" of the screening board pronounced him a security risk, a conclusion that seems to be standard practice for such initial reviews. The company fired Mike the moment it received word of the screening board's decision, and three detectives hustled him bodily out of the plant.

He didn't even have time to pick up all of his personal belongings.

Mike got a lawyer to take his case to the appeal board. The notification Mike had received contained only a vague accusation about "past associations" in form language. Together the two men tried to figure out why Mike had been declared a security risk.

In 1940, when Mike had gone to work in a factory for the first time, he had joined one of the leftwing unions that were later kicked out of the CIO. He had never been much interested in politics, and abstract ideologies were far beyond his horizons. The local bargained effectively, and Mike wasn't concerned about its views on world disarmament. He became a steward, held other local offices, and in 1949 took a staff job with the international union. It was a step up for an ambitious young man.

On the staff Mike's nonpolitical orientation brought him into sharp conflict with the leftwing leadership. "'I wouldn't sign checks made out to all kinds of political organizations and causes I'd never heard of," he explains. "I told 'em that stuff was none of our business." Mike was learning about Communists the only way a man of his sort could learn. In less than 8 months he was dropped from his staff job.

Mike went back to his plant, and, he claims, helped take his local away from the "lefties" and into the rival organization the CIO was setting up. He started to work in 1951 at the plant from which he was recently fired, joining and becoming an officer in a local of one of the CIO's largest and most effectively anti-Communist internationals.

At this writing Mike's case is still pending.

L. P. S. C. P.

Although most workers are only slowly becoming aware of the "industrial personnel security clearance program," in recent months security firings have been occurring regularly in American industry—at an instrument shop here, a chemical plant there, an aircraft factory somewhere else. The program was created in the spring of 1953 by the Department of Defense to safeguard work on military and other "sensitive" contracts with private industry. Also established were the investigative procedures, the screening and appeal boards that act in accordance with 21 criteria for determining "clearance." These are almost identical with the standards established for Government workers by Attorney General Brownell when he ordained a switch from President Truman's emphasis on "loyalty" to the present one on "security."

The criteria for "security risks" range from overt subversive acts through past and present political associations to "sympathetic interest" in totalitarian movements. They take into consideration personal habits or associations that "tend to show" that a person is "unreliable," specifically outlawing anyone who uses alcohol "to excess" or commits acts of a "reckless, irresponsible, or wanton nature."

Under this system, proof or disproof of charges that a man is a risk depends upon the interpretation of these extremely broad and vaguely worded criteria by those who make up the boards. As their directives explicitly state, their judgments are not guided by the usual rules of evidence of American courts. Nor is there any provision to insure that those on the boards will be aware of and understand the normal contacts with radicalism experienced by American workers during the depression, the organizing period of the 1930's, and the war years.

Whether or not such standards are useful in judging Government workers, they impress union men as ridiculous. Factory work, which centers on things rather than relationships, permits people with all kinds of strange mannerisms and ideas to form a well-functioning work group. One local leader with wide experience protested: "If they really applied those standards generally, half the plants in the country doing 'sensitive' work would have to shutdown for lack of workers." Actually the standards are applied only when investigation of a worker is requested by management or by a Government agency.

It seems obvious to both union leaders and rank-and-file members that whoever created these standards would view with alarm some of the traditional behavior patterns of certain working-class groups, some of whose members consider getting drunk or brawling standard recreation. The rules appear to be the work of men who have never had to walk a picket line, who were never caught up in the unemployment and social unrest of the depression and its aftermath. The criteria sound like the creation of the most stuffy, puritanical, uninformed middle-class minds. They elicit derogatory laughter or groans of despair from workingmen.

Many union leaders are especially concerned with the revival of procedures they thought had vanished forever from the industrial scene and with management's apparent enthusiasm for these methods. According to Edward Mycrding, the executive director of the Chicago office of the American Civil Liberties

Union, private detectives are now being used by some firms to hunt for security risks among employees and job applicants. "We know," he told me, "that blacklists have been created. There are several private agencies, some of them boasting about their ex-FBI men, who for a fee offer industry a private screening service for employees and prospective employees. One such agency claims lists of thousands of 'subversives,' presumably culled from the records of various governmental investigating bodies as well as from private sources. This practice gives no opportunity whatever for the fellow who finds himself going from plant to plant with no luck even to find out what the charges are."

It all reminds the older workers uncomfortably of the inequities of the pre-union and unionizing days—the blacklisting, the arbitrary rule by men instead of by contract law and grievance procedure. "We don't know much beyond the minimum facts," Myerding added, "because it is all being done behind closed doors and nobody wants to discuss it."

RISK AND "INTENT"

Normally the Government does not ask that a man who is refused clearance be fired, much less blacklisted. It specifies simply that the worker be put on unclassified work. During the days of the Truman loyalty program, Bell Aircraft used a system in which workers without clearance wore an identifying label on their clothing, a sort of security version of the Star of David. Bell now follows the general pattern, firing the "risk" and then waiting to see if he wants to fight the case.

There is plenty of unclassified work at Mike's plant and in most factories, but the chances are good that employees discharged in this way will give up rather than face the time, expense, and personal anguish of fighting against the heavy odds inherent in the present system. For it often seems a nearly impossible task to convince a suspicious board that one is innocent, not of the commission of some specific act, but of the slightest potential tendency to commit any of a number of unnamed acts under any possible conditions that might exist any time in the future.

"It certainly seems," said a grievance committeeman at another plant, "as if these companies are always especially eager to fire a man in a security case if he's a strong union man." At one factory in the East 9 out of 19 employees discharged for security reasons were part of the local's active core and had held various offices in it. From such episodes workers easily get the impression that the security program has many aspects of an antiunion crusade and they react accordingly. "Hell, we know who the commies are," one thoroughly anti-Communist officer exclaimed bluntly. "But some of those guys aren't traitors or spies, just off on the wrong track. Some of them are our neighbors and friends, fought the union fight with us and took the same knocks we did."

Another local officer took a different point of view. "It makes me damn mad to be forced into a position where I have to defend Communists because of the civil-liberties issue. Almost all the guys left in the party now are pretty despicable people from my experience. But they're propagandists, not spies. So this crazy business makes me use time and energy defending them without accomplishing a thing for 'security.' But we have to defend them because of the principle involved and because the thing can be used to attack the whole union—and probably will be."

Attorney General Brownell's most recent request, for power to "dissolve" allegedly Communist-dominated unions, adds fuel to the fires of suspicion among union leaders. Although their opposition to such a measure is nearly unanimous, they seem confident that it will go the way of a similar proposal by Senator John Butler, Republican, of Maryland, which would have placed upon the unions the burden of proof that they were not Communist-dominated.

Myerding feels that the threat to labor is broader than many of the union men realize, especially in view of the private efforts that the Government program has inspired. "Labor must recognize," he says, "that with this program industry is developing a tremendous force of antilabor 'experts.' The 'experts' make a living out of finding 'Reds,' and as the pickings get slimmer they are bound to get more loose in their definition of the bogeyman. What could be nicer than, as actually happened in a couple of Chicago plants, the hidden 'experts' find the union's stewards are 'Reds' just before an NLRB election?"

In any case, quite a few of Mike's fellow workers are worried because they too were active members of leftwing unions before the CIO kicked those unions out and set up new ones. But union leaders are not concerned about the security

program solely in narrow terms of self-defense. Since they believe the program in fact does almost nothing to make the country more secure, many of them feel strongly that it may disarm people generally with respect to real threats while making them ever more tolerant of injustice.

Production workers know that every man with any skill and length of service has learned how to slow down production, an old weapon in the arsenal the workers draw from when the fights with management get tough. And they know that the high-seniority men are experts in finding out everything that is supposed to be a secret. They have listened to old Sam, the electrician, impressively proclaim how he could "fix it so we'd all have a little vacation." They are aware that Johnny, the night-turn clerk, makes conversation by showing friends how he has learned to identify the important military items. Given these facts of life in the factory, the union men don't see how possible spying or sabotage is affected by labeling or eliminating all the leftwingers, the heavy drinkers, each individual who has ever flirted with radical ideas or organizations, and the "nuts" and fanatics who enliven every department and shop.

"After all," said a young but sophisticated local officer, "every radical in the mill is known because the men get to know each other thoroughly. The guy who can get caught under this system isn't the man who'd be used as a spy. He'd be a guy with no record, someone who never said anything more startling than 'Let's have a coke.'" It is not the easily recognized Communist or fellow traveler whom the men fear, to the extent that they worry about security; it's the occasional shrewd, unscrupulous fellow who is "out to make a fast buck" any way he can, the kind of man they call a promoter.

POLICING THEIR OWN SHOP

"Can you imagine what a truly effective system of preventive surveillance would be like?" asked an important staff member of one of the CIO's big internationals. His implication was clear: Every plant a miniature police state with a Gestapo-type agent for each little work group. Of course, such operatives would have to be better trained than the bright law-school graduates turned FBI agents who, like the "private eyes" used by some companies, generally know little about the details of factory life.

Like most union leaders, this staff man believes that the working people's own loyalty and commonsense are better able to protect the Nation's production lines than any Government-management scheme, which must be either totalitarian or ineffective. In theory, at least, this has always been the position of American leaders. Until recently, however, the procedures for maintaining such a position have not been properly defined for the guidance of local officers and members upon whom the burden of dealing with each individual case must fall. Top leadership does not want to take a position on "security as such." As the staff man put it, "We have to live with this program, and we definitely don't want to get involved in changing it or enforcing it. We believe that spying, treason, and sabotage are matters for the Government, not the unions or the companies, to handle." Reconciling this position with adequate protection of the job rights of the individual worker has taken time. Meanwhile, locals have generally been unprepared to act when "security" cases arose, and the behavior of both locals and internationals has varied greatly.

There have been a few instances in which local leaders appeared glad to see a member "get the gate," for political or factional reasons. Sometimes they have been afraid to defend a man who might end up, rightly or wrongly, being labeled a Red—even though they admit that he has the same rights under the contract as anyone else.

The first reaction among the rank and file at Mike's plant to this firing was an urge to "pull the pin" and shut the place down. The international cautioned them not to strike. "That will just make it look like Mike wants to hurt production," his supporters warned. The union is now fighting Mike's case through arbitration, with the argument that there is plenty of unclassified work for which he is qualified.

Most such cases have been won. Another worker who returned from a staff job with the same international to which Mike belongs was refused reemployment by his company. It charged that he had at one time been "close to the Communists," which of course had been true of him and quite a few others in his local. The local, with full backing from the international, demanded that the company show cause for discharge under the contract, and went to arbitration with the case. Now the man is back on his job.

Within the Internationals most affected, this kind of policy and procedure is now being advocated more clearly and communicated more effectively to the lower echelons. The CIO's Electrical Workers, engaged as they were (and still are) in a rough fight with the remnants of the old left-wing outfit, often found moral and practical considerations in conflict and were reluctant for a time to face up to the problem in a vigorous and consistent way. Recently, however, IUE president Jim Carey announced that the union will not condone firings that do not fall within the provisions of the contract, including firings of workers who "take a fifth" as well as those not cleared for sensitive work in plants where nonsensitive jobs are available.

At the local level officers are trying to establish procedures even in advance of any security cases, especially in locals with a left-wing background or with many radicals among their active members. They are seeking verbal or written agreements with management that will bring an end to promiscuous security firings and take the handling of such cases clearly into the realm of contractual relations.

Although a general effort to protect the individual worker's job rights is taking shape, it has a long way to go. The firings continue. There remains that minority among the rank and file who favor anything that will get the Reds. In some shops, as happened almost as this was written, members take personal reprisals against "lefties" identified by investigating committees or clearance boards. But the basic humanity of the labor movement in the mass production industries, its fundamental concern for the individual, and its deep resistance to arbitrary rules and decisions have been aroused.

"IT DOESN'T MAKE SENSE"

The consequences of being fired as a security risk are always very great. Sometimes a man's particular skill makes some sort of defense work almost inevitable at a time when Government contracts are so pervasive. Even if this is not the case, discharge—with or without blacklisting—hits hard at a worker's earning ability. He loses the precious seniority that is the key to well-paying jobs. His home, his family, his relationships with his friends are all affected.

Mike, tough and confident as he is, has been deeply shaken by his experience and still finds it almost incomprehensible. "You know," he said, "there are kids around here that won't talk to my 16-year-old daughter since this happened. And here I am, sitting around, not holding down a job till this is settled, even though the union has been wonderful and I'm getting my full pay. But I've an 80-year-old aunt living with me, and my mother lives here—she's 70, dying of cancer. Do you know what it does to them? Thank God my wife is giving me every bit of support. She's a real union woman. But it doesn't make sense, it doesn't make sense at all. I didn't think things like this were supposed to happen in America."

The words come with utterly sincere passion, with all too real fear and anguish, from the mouth of this big, normally exuberant worker and leader of workers.

Even the man who is cleared and returns to work often finds his place on the job more difficult. There are always those who thrive on suspicion and doubt of their fellows. As one lawyer who has handled such cases put it, "A man who has been acquitted of trying to poison his wife will always find he has some neighbors who no longer want him over for dinner." And the "cleared" man must live with the threat over him that his file may be "reactivated" and the whole procedure begun again.

Most of the workers seem to agree with one oldtimer who labeled the blacklist poison no matter what its purpose or form. "You can't cure no problem with poison!" he insisted. "Hell! I know what the blacklist means 'cause I got it back when we were organizing in the thirties. I didn't work here, then. Once I was blacklisted I didn't work anywhere for a while."

He reflected silently for a moment on the consequences of being fired for security reasons. "That's a pretty rough penalty for being a 'risk,'" he added. "At least I got it for actually beating the hell out of my foreman and not because I looked like maybe I'd do it."

Mr. NIXON. I want to make this point with regard to the tests. The vagueness of these tests give rise almost without limitation to an employer-inspired blacklist that can be applied throughout the country.

I was disturbed, and I am sure that all of the labor movement of the country would be disturbed in connection with this bill to read in the New York Times on May 9 an account of Attorney General Brownell's speech made to the Business Advisory Council of the Department of Commerce.

The story in the New York Times says:

> The point in the Attorney General's talk that was of most interest to his audience tonight, however, was a description of the steps his Department would take to brief industriallsts on how to screen job applicants in defense production plants. The Antitreason Division, he said, will cooperate with manufacturers to prevent the infiltration of Reds, and to balk saboteurs.

This indicates the degree of coordination between the manufacturers and the Government in the application of this general blacklist.

The third area in which I raise a question before this committee is the scope of this blacklist and screening procedure. Does this committee know what is meant by "defense facility"? There is absolutely no limitation on the application of this definition under this proposed legislation by the Secretary of Defense. Does this committee know how many people are now being screened? Do we know whether it is the intention to add 100,000 to the screening process, or a million, or 5 million, or 10 million?

I submit to the committee that we have absolutely no guidance, and no information as to this question, that if you read the language of the law, it leaves completely open without any limitation whatsoever the unlimited right of the Secretary of Defense to apply this blacklist screening process to the total economy.

Mr. WALTER. I think you are wrong about that, because "defense facility" are words of art that have been defined in section 3 (7) of the Internal Security Act and have a well-understood meaning.

Mr. NIXON. Mr. Walter, I have read very carefully this bill, and I have looked back into the Internal Security Act definition which is the basis of the definition used here, and there is no limitation put upon the definition of "defense facility." It does not have to be producing defense material at the present time under the terms of this law, and the general thinking, which I believe has some merit to it, is that practically every industry is related to war production in a war situation; it would permit the generalized application of this screening process throughout American industry. There just is absolutely no limitation put on this whatsoever. While it is popular to refer to powerhouses as the objective of this screening process because that is good propaganda, and it conjures up nightmares in the minds of people, the fact is that this is directed at every industry, that it can be applied to every industry, regardless of what they are making and has no necessary relationship to defense production whatsoever.

The fourth question that I raise is how to apply this. The language of the law is that the President shall apply it "through such measures and issue such rules and regulations as may be necessary." This is without limitation upon the steps that the President may take.

The point I think needs to be reemphasized that Congressman Walter has raised at least twice; why is there a specific preclusion of the Administrative Procedure Act, which provides for a court of appeal. It is not only that there is no court of appeal provided; this law in a calculated fashion specifically outlaws the court of appeal. There is absolutely no question about that.

I think as these questions are raised—and I know the answers are not on the record of this hearing, no one has come to clarify them, the author of the legislation has not come, the Secretary of Defense has not come, the sponsor of the bills in the House has not come—we need to be reminded of the fact that this is not an overnight piece of legislation introduced by an individual Congressman who thought something might be a good idea. This is the carefully calculated legislation prepared over a long period of time by the United States Department of Justice. This leads us inevitably to the conclusion that these vaguenesses, these broad terms, these evils are calculated vaguenesses and calculated evils, and that it is calculated to leave out the normal right of appeal that would be applicable if the administrative agencies procedure were to apply. It leads one, it seems to me, to the only conclusion that this provision would create a blacklist administered by the Government in cooperation with employers, the kind of a blacklist which the unions over years of struggle have succeeded in outlawing insofar as initiation and application by the companies alone is concerned.

Mr. WALTER. That is not new as far as unions are concerned, because unions have blacklists of former members of their unions, do they not? As a matter of fact, your union is on a blacklist right now.

Mr. NIXON. I don't know what you mean by "blacklist."

Mr. WALTER. You used the term.

Mr. NIXON. I know what I mean by it. I don't know what you mean by it.

Mr. CELLER. Explain what you mean specifically by it, as far as this bill is concerned.

Mr. NIXON. Yes, sir. Under this provision, an individual that is prohibited from employment in a defense industry will be generally prohibited from any employment in a so-called defense industry. His name will be on a list, and he cannot get employment in any of these industries. I say again that if you look at the language of this, this means general application throughout the entire American industry.

Mr. CELLER. In other words, this is a punitive statute.

Mr. NIXON. Absolutely it is. It deprives a man of his right to work. At the present time what has happened, when grievances have arisen over the screening procedure, practically every union in the country has fought and won the right of a noncleared worker to work on a nonrestricted job. That is what has happened. They have transferred him from classified work to nonclassified work. This will eliminate that, and make it impossible for him to work in any area.

Mr. CELLER. Being a punitive statute, generally the language of the statute must be very definite and succinct that he who runs afoul may read, and should not be susceptible of any double interpretation. Am I correct in that?

Mr. NIXON. It is an essential element of due process, I believe, sir.

Mr. CELLER. Could you find words here which are very indefinite of interpretation in this so-called punitive statute?

Mr. NIXON. There is absolutely no question about it.

Mr. CELLER. Give us an illustration.

Mr. NIXON. I just went over 3 or 4 questions that illustrate this precisely. What is meant by "reasonable ground to believe they may engage in other subversive act"? What does that mean? I don't know what it means. It is as wide as the barn door. In it you can apply the most extensive political censorship and blacklisting. This is not just an allegation by myself. I say to this committee, with all respect, if you will acquaint yourself with the facts of the present screening practice, you will find it saturated with political tests, political censorship, and political blacklisting which has received the opposition of every liberal labor and civil liberties group in this country.

The present proceeding has that character to it. Beyond that, if you want to apply this generally throughout industry, you are making a general application of a blacklist without any reservation or limitation on it.

Mr. CELLER. Is one place on that so-called blacklist that someone may have committed some crime, or is it just the judgment of the board that there may be the potentiality of the commission of some act of subversion?

Mr. NIXON. It is purely the potentiality which is tested.

Mr. CELLER. Would you say, then, that by this act we are punishing for potential crime?

Mr. NIXON. Yes, of course.

Mr. CELLER. Have we ever done that before?

Mr. NIXON. It would be my own personal opinion that the Smith Act prosecutions would come under that definition.

Mr. CELLER. I think the Smith Act provides something rather definite. You must teach, you must advocate; that is what we call the overt act. But here a man may be working in a plant and the board could put its finger on him and say, "You are a potential subversive, and therefore you must be deprived of your right to work in a particular plant."

Mr. NIXON. That certainly is unprecedented.

Mr. CELLER. I think what we are doing here is to punish a potential crime or a potential criminal. That is what concerns me quite a bit in this legislation.

Mr. WALTER. Will you yield at that point?

Mr. CELLER. Yes.

Mr. WALTER. I am just wondering if that is correct, because if you will turn to page 3 of House Joint Resolution 527, there is no punitive action.

Mr. CELLER. I was referring to House Joint Resolution 528.

Mr. NIXON. 528 is the number.

Mr. CELLER. I am referring to 528 about the Communist infiltrators. That is what I am referring to.

Mr. NIXON. Excuse me.

Mr. WALTER. I thought we were talking about individuals that were blacklisted.

Mr. CELLER. That is in House Joint Resolution 527.

Mr. WALTER. As I read 527, there could be no action taken against an individual unless he had been notified of the charges against him and given an adequate opportunity—I am quoting the bill. All I am interested in asking you at this point, Mr. Nixon, is what does adequate opportunity to defend himself mean?

Mr. NIXON. I don't know what it means. But the limitations on it are written into this law. For one, it provides that the Government does not need to tell him who makes charges or what the charges are. It says he shall be given a "fair summary." I think it was you who brought out the point, what does "fair" mean?

Mr. WALTER. I want to know what is a "fair summary."

Mr. NIXON. It is exclusively within the jurisdiction of the individuals bringing the charge.

Mr. WALTER. If you will read further in the same section, "the charges shall be sufficiently specific"; what does "sufficiently specific" mean?

Mr. NIXON. I certainly don't know.

Mr. WALTER. It seems to me that because of that language, we have to turn to the body of the decisions. I am quite certain that there are many decisions that define both of these terms, both "adequate opportunity" and "sufficiently specific," but I have not seen them. It would seem to me that somebody from the Department of Justice ought to tell us what they had in mind when that language was used.

Mr. CELLER. In furtherance of the statement by the distinguished gentleman from Pennsylvania, I want to say, Mr. Chairman, that when the Attorney General was before this committee on April 12, 1954, he was describing in general what he called a 10-point anti-subversive proposal of the administration. That was quite some time before the introduction of these two bills that we are now considering. In his general statement he made a brief reference to the import of House Joint Resolution 527 and House Joint Resolution 528. Specifically he gave us 70 words on the one and 41 words on the other. Here is what he said:

> We have presently under study and will submit shortly amendments to the Internal Security Act of 1950 which will broaden the registration provisions to include not only Communist-action and Communist-front organizations, but also labor unions or businesses which are under the domination of Communists, and are in the position to damage our national security. This amendment should prove of great importance in removing a potent Communist menace from the operation of defense facilities.

Then he went on to say under subversives in industry that—

> we also have under study existing law to permit removal from industries important to our defense of those persons who because of their sympathies and associations cannot safely be permitted access to such industries.

That is all we have had from Mr. Brownell up to this juncture on these important bills. They contain language which to say the least is considerably vague. I certainly cannot legislate intelligently unless I know what is in the mind of the sponsor of the bill when he uses those vague and rather strange terms.

I believe, Mr. Chairman, it is incumbent upon us formally to ask Mr. Brownell to appear or send somebody to represent him to explain in detail so that we may understand what is at least in the minds of the sponsors and those who wrote this bill.

In addition, Mr. Chairman, I think that since defense industries are involved, the Department of Defense is very vitally or should be very vitally interested in this legislation. I think we should have somebody from the Department of Defense to give us the benefit of counsel and advice.

Thirdly, since this is a labor proposal which affects materially laboring men and women, I think we should have the benefit of the words of the Secretary of Labor or his duly nominated representative to come here. Those three departments are vitally affected.

I hope, therefore, Mr. Chairman, that a formal request will be directed to those three Cabinet officers to appear and explain these bills and give their opinion of the bills. I don't think that this bill has been submitted to the Bureau of the Budget or the Cabinet officers mentioned have requested the Bureau of the Budget to give any advice or counsel, either. So we are rather in the dark on this situation.

Every time a branch of the administration sends us a bill, there is always accompanying that bill a communication describing in detail, and then that is followed up by testimony of the department. For that reason, since we only have as I indicated before 70 words on one bill, which words are of a very general nature, and 41 words of another, also in general terms, I think that we must strongly indicate those departments we wanted to appear.

Mr. WALTER. What Mr. Celler has said more eloquently than even Martin Dies with all his eloquence, points up to the advisability of departing from this approach and just simply to outlaw the Communist Party.

Mr. GRAHAM. You may proceed, Mr. Nixon.

Mr. NIXON. I just want to be sure I get my 30 minutes. I am glad to hear what the committee has to say, but it takes me at least 30 minutes to deal with this important matter.

Mr. CELLER. You have addressed yourself to the union point of view, but businesses are also involved. I would like to get your views on that.

Mr. NIXON. I am not an adequate spokesman for business.

Mr. CELLER. You have been down here long enough to know that there are certain rights involved of businessmen and owners of plants. They are affected, too. I would like to get your view on that.

Mr. NIXON. I think there is no question but what if you were to get the view of organized industry they would have very, very serious questions about this legislation as I think you perhaps know. The Wall Street Journal in a major editorial on June 1, 1954, addressed itself to this question and came up with unequivocal opposition to this particular Brownell legislation. I believe, as a matter of fact, Congressman Walter put that editorial in the Congressional Record. If it is not in the record here, I think it should be put into the record of these hearings. I guess it has not been. I would like to submit that as a direct answer to your question, sir, on this whole matter. The Wall Street Journal editorial on this legislation dated June 1, 1954, entitled "The Rights We Seek To Save."

Mr. GRAHAM. That Wall Street Journal editorial is already in the record.

Mr. NIXON. Thank you, sir. But that indicates the concern of business about this legislation.

Mr. WALTER. Of course, that is perfectly understandable because if you blacklist somebody today and tomorrow you blacklist somebody else, and the next day you start blacklisting some business.

Mr. NIXON. In my testimony, Mr. Walter, I make the point that someone might say that, if you look at the record of industry, you will

find how major corporations held back the conversion of civilian industry to war production at the beginning of 1941, that several major corporations were found guilty of criminal acts of producing faulty war materials, that several major American corporations have been found guilty in the courts of law of very dangerous relationships with Nazi cartels, damaging the national-defense program and protection. Somebody might come up and say therefore we need to have screening and liquidation of American industry because they are a potential danger. When I make that observation, I want to quickly say in making it, I don't support it. I would be opposed to this sort of approach. Your point is very well taken.

I want to say if you want to look at the record, you can make much more of a case with regard to American industry on this score than you can with regard to American labor and trade unions.

Mr. WALTER. That being the case, would it not be advisable to authorize somehow or other labor organizations under the law to police their own activities?

Mr. NIXON. Presumably they have that right now; that rests on the right of workers to elect their own union and to elect their own union officials. I know of no way to change that without limiting this basic democratic right of trade unions.

Mr. CELLER. There is a clause in here as follows:

> The extent to which the funds, resources, and personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government—

and so forth. As I view it, the proscription is against the objectives that are promoted by these groups which are barred groups, but there is no distinction made between what is termed legal objectives and illegal objectives. There may be good causes that are espoused by a Communist-front organization. Would a group that comes before the Board which has supported good objectives, worthy objectives, objectives that we would deem worthy, be susceptible of punishment under the wording of this act?

Mr. NIXON. I think there is no question that they would be.

Mr. CELLER. Give us your views on it.

Mr. NIXON. As a matter of fact, the entire labor movement is concerned about this. I know the AFL has repeatedly made the observation that under this type of legislation you could take a union that fought, let us say, for FEPC or for repeal of the Taft-Hurtley Act, and say this is "furthering the objectives of the world Communist movement," and could move in the full impact of this legislation on that organization.

More serious than that, I have here a staff memorandum of the Republican majority policy committee in the Senate, prepared on May 6, 1954, called the Republican pursuit of American Communists, and I can prove in the terms of this document that the Democratic Party is a Communist-infiltrated organization; that President Truman is guilty under the terms of this act, and that every Congressman and Senator who supported the veto of the President on Taft-Hartley, McCarran Internal Security Act, and the Immigration and Nationality Act, has been cited in this Republican staff memorandum which was prepared 4 days before this legislation was introduced, as being guilty of helping Communist infiltration in this country, and furthering the objectives of communism. I have this right in front of me.

This is a dangerous situation, and it is not left to speculation when the staff of the Republican majority in the Senate prepares this kind of a case 4 days before this kind of legislation is introduced. I tell you it is an extraordinarily unprecedented proposal.

Mr. CELLER. In other words, if some union or union members advocated a rigid farm-price support and the Daily Worker advocated it also, would that be advocating an objective sponsored by a Communist entity?

Mr. NIXON. Of course it is.

Mr. CELLER. Would that get the union possibly within the toils of the statute?

Mr. NIXON. Of course it would. There is no limitation in this legislation upon the judgment with regard to that.

Mr. CELLER. Of course, it is not problematical that the members of the Board would do that, but that is not the only criterion. We must judge what is possible under legislation. Nobody knows what the future can bring.

Mr. NIXON. It is not just vague speculation when one realizes the power that McCarthy and his supporters have wielded and the possibility that they might be interested in carrying out this kind of legislation. The point you make is not just imaginary. It is an imminent danger.

Mr. WALTER. I think the way to play it safe would be to determine the position taken by the Daily Worker and just take the opposition.

Mr. NIXON. Yes, I think that might guarantee safety if you were careful about it.

Mr. HYDE. You say that advocating a farm program or advocating graduated income tax would be considered Communist infiltrated under this act?

Mr. NIXON. It could be.

Mr. HYDE. How could it be when under the act it specifically provides that an organization in order to be considered Communist infiltrated, must be in a position to adversely affect the national defense or security of the United States? Do you mean to seriously propose that some court would hold that advocating graduated income tax would be deemed to be adversely affecting the national defense?

Mr. NIXON. It certainly is possible under the legislation.

Mr. HYDE. Do you advocate that as a serious proposal that that is the way it would be interpreted?

Mr. NIXON. I don't know how this would be interpreted. If McCarthy was interpreting it, I would say yes, it might be. But the point is that you write legislation here that has its own protections against any arbitrary action or misapplication and the point is here that you are instituting not a rule of law, with the safeguards of law, but you are instituting something that depends exclusively on the rule of men, the men who happen to apply this.

Mr. HYDE. No. Communist-infiltrated is defined under House Joint Resolution 528.

Mr. NIXON. If you catch the point that we are making, sir, the point is that the tests are so vague as to have virtually no meaning. The tests are so vague as to leave to the——

Mr. HYDE. Regardless of the tests, Mr. Nixon, it still has to meet the definition of "Communist infiltrated" in section 1 of the bill.

Mr. NIXON. The tests and the definitions are so vague as to leave virtually absolute discretion to the human beings administering the law.

Mr. CELLER. Let us see that a minute. Take 528, page 5, line 14:

In determining whether any organization is a Communist-infiltrated organization, the Board shall take into consideration—

and they have 4; let us take 2—

the extent to which its funds, resources, or personnel are used to further or promote the objectives—

it does not define "objectives"—

of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act.

I think my question that I originally propounded grew out of the vagueness of the term "objectives." So there is no distinction between illegal objectives or legal objectives for which their money or efforts are being expended.

Mr. WALTER. You are overlooking "objectives of Communist-action organizations."

Mr. CELLER. One of the objectives may be an FEPC.

Mr. NIXON. The Director of the Federal Bureau of Investigation, I think, appeared before an appropriation hearing just a few months ago and listed the objectives of the Communist Party. I don't remember all of them, but they were such things as repeal of the Taft-Hartley Act, ending the war in Indochina, repeal of the Smith Act and Internal Security Act, 5 or 6 things of that sort, which are perfectly legitimate political objectives.

Mr. WALTER. Of course, that is a well-known Communist tactic. They get something popular and jump on the bandwagon in order to elicit assistance.

Mr. NIXON. I don't know whether that is limited to Communists. A good many politicians do that.

Mr. WALTER. You know as well as I do that what I say is true.

Mr. NIXON. The point is that the Director of the FBI has listed these things as the objectives. Now you have legislation which is going to find organizations guilty of being Communist-infiltrated organizations because they are furthering these objectives. You put these two things together and you have something that is not pure speculation. You have an absolutely clear case.

Mr. CELLER. I want to say, Mr. Chairman, that I have a sympathy with the objectives of the Attorney General. I want to get after subversive organizations wherever they are. But I do not want to do it in this very vague and most uncertain fashion.

Mr. NIXON. I want to address myself now to 2 or 3 general arguments against this legislation.

The general public is being told that the reason Congress is asked to take these unprecedented and far-reaching measures is because our national defense and security requires them in order to protect us against acts of espionage, sabotage, and subversion. This is the language of the President and the Attorney General. It is the language of Senator Ferguson, who is the author of these bills, in a speech which he made on June 16, in which he made an important comment:

It is a contradiction of human existence that people who love freedom must take means that appear to be against all our traditions in order to protect ourselves from the few rotten apples that exist in our midst. I regret to tell you that I believe such a security program is essential. It is a deplorable aspect of our times, particularly deplorable because it goes contrary to our nature and traditions. We are groping along paths unaccustomed to most Americans.

I pay tribute to Senator Ferguson for being candid. He openly acknowledges the fact that these proposals go against our traditions and makes it perfectly clear that they do involve a limitation on our basic civil liberties, and he says that this is necessary for purposes of security. I think that puts the issue right up to us.

We directly challenge the assumption that these antidemocratic bills are necessary to protect our Nation against either actual or potential actions of espionage, sabotage, or any other criminal attacks on the security of our Nation. It seems to us that advocates of this legislation must take the position that existing police protection and plant-security methods are inadequate to protect the Nation from espionage and sabotage. They must take the position that the FBI and the security officers and the security system of the Armed Forces are unable to protect the country against criminal acts of sabotage, espionage, or subversion. This we challenge.

I say to you that this policy must be based not on mere speculation or fear, but must be based on fact. The test of fact is the test of rationality and strength in this kind of situation. We need to take a look at that.

This legislation is aimed primarily at trade unions and workers. What are the facts as you consider this step of going counter to our traditions? The fact is a very clear one. There has not been a single verified instance of union-connected sabotage or espionage in any industrial establishment in America within our recent history. This fact holds true for unions of varied political views, and holds true during a period of varied political and international circumstances.

Mr. CELLER. I did not quite get that. In other words, you say there has been no case of union sabotage as distinguished from individual sabotage.

Mr. NIXON. I say there has been not a single verified instance of union-connected sabotage or espionage in any industrial establishment in America within our recent history. Sir, I have said this at least five times before congressional committees, and I have challenged advocates of this legislation to mention a single, solitary exception. There has been no exception put on the record of Congress in the last 2 or 3 years that this legislation has been considered. It is important to say this, that this is true during the period of the Soviet-Finnish war, during the period of the Nazi-Soviet pact, during World War II, during any phase of the cold war, including the Korean conflict, and during our military supply support activity to the French forces in Indochina. This unqualified record shows how utterly groundless are the proposals to arrange the bureaucratic liquidation of various trade-union organizations on the basis of potential danger of sabotage, espionage, or criminally subversive attacks on the security of the country.

The representatives of American industry have been before committees of Congress repeatedly on this question and they have been

asked about this. I know particularly, for example, that the vice president of General Electric Co., Mr. Boulware, has been repeatedly asked whether he has any examples of sabotage or espionage in his plants, and he has invariably replied no, and he has invariably insisted that GE protects the security of their production adequately.

Mr. HYDE. You say no threat at all to national security exists?

Mr. NIXON. No, sir; I don't say that.

Mr. HYDE. You say there is a threat?

Mr. NIXON. You say do I say there is no threat to national security and I say no. I do not say that.

Mr. HYDE. Do you admit that there is a threat?

Mr. NIXON. Yes; I think this legislation is a threat to our national security.

Mr. HYDE. And this legislation is the only threat you see?

Mr. NIXON. It happens to be the one I am talking about now.

Mr. HYDE. Do you see any other threat?

Mr. NIXON. I think our Nation is secure.

Mr. HYDE. You do not see any threat to our national security from the outside world?

Mr. NIXON. I would be concerned about our foreign policy and the state it is in now, but I don't know that you want to get into that question. I don't mind if you want to talk about it.

Mr. HYDE. I am not on that question; you are.

Mr. NIXON. You asked me what I am talking about.

Mr. HYDE. You see no threat to our national security other than this legislation and our foreign policy?

Mr. NIXON. There is some other legislation that I think jeopardizes our national security.

Mr. HYDE. Then you see no threat to our national security other than legislation and our foreign policy?

Mr. NIXON. I think there are some nonlegislative Fascist forces in this country that I am concerned about.

Mr. HYDE. You see no threat other than foreign policy, legislation, and fascism?

Mr. NIXON. I don't think we are threatened by communism in this country, Mr. Hyde.

Mr. HYDE. You do not think we are threatened at all?

Mr. NIXON. No, I don't. I don't think there is any threat.

Mr. HYDE. No further questions, Mr. Chairman.

Mr. GRAHAM. It is now 10:16, and general debate on the floor of the House will be over in 4 minutes. Then the bell will ring and we will have to go. So I want to warn you now that we will be out of here probably in 4 minutes.

Miss THOMPSON. Mr. Chairman, and members of the committee, I would like to suggest that in view of all the controversy that we have in regard to these two bills, House Joint Resolution 527 and House Joint Resolution 528, that we adopt H. R. 8912, the bill introduced by Congressman Martin Dies, of Texas.

Mr. GRAHAM. Do you make that as a motion?

Miss THOMPSON. I make it as a recommendation.

Mr. GRAHAM. We will consider it.

Mr. CELLER. Mr. Chairman, in view of the fact that this comes as a complete surprise to me, and is of such import, it seems to me that rather than let him go 2 or 3 minutes longer, we ought to consider

the recommendations made by our distinguished colleague, and reach a decision before we meet again on the further consideration of the proposals before us.

Mr. GRAHAM. I have not said very much, but I will say a few words now. Today we will conclude 10 days of hearings on these bills. They began on March 18. We had hearings on that date, April 5, 7, 8, 12, June 2, 9, 23, 25, and today. That has really been an unusually long hearing. We are to be called back here in full committee at 2:30 by Chairman Reed on consideration of other bills. Now, in justice to these other persons who have come—the CIO has been asked to come this morning, Justice Musmanno is back, and I understand Congressman O'Hara of Illinois wants to be heard—how we are going to fit these in I do not know. What we are trying to do is to protect everybody. Mr. Nixon, can you not submit a statement now, and give these other people a chance?

Mr. NIXON. Do not try to put on my shoulders the responsibility for not giving people a chance to be heard. I am perfectly happy to give people such a chance. The hearings on the administration's proposals contained in these two bills have been very limited. Up until this morning, the hearings were less than 4 hours in length on these 2 bills. I am anxious to complete my statement and my argument. These bills themselves comprise, I think, about 26 pages.

Mr. GRAHAM. You are going on and on, and we are not getting anywhere. These hearings are going to close today. I mean what I say. These hearings are going to close today.

Mr. WALTER. Mr. Chairman, I must register a protest because the bar associations have not been heard.

Mr. GRAHAM. Mr. Walter, let me tell you that 4 associations were invited, 3 have declined, and the fourth by telephone communication said they do not wish to be heard at this time.

Mr. WALTER. Good.

Mr. GRAHAM. Mr. Nixon, you know what we are doing now. If you want to shut off these others——

Mr. NIXON. Just a minute. I don't want to shut off anybody. Don't put that on me. I want to complete my statement. I am happy that there has been as much discussion from the committee as there has been. That is proper and inevitable at this stage of the hearing. As I said before, when we started this morning, this committee had spent but 4 hours on these 2 bills, and that is not excessive, sir.

Mr. GRAHAM. Mr. Walter and I have been conferring, and it is our plan, so you may know it, to summon those from the Department of Justice who drafted this bill, and have their explanation of it. For your information, Mr. Celler, while you were out, I announced that the hearing will close today. You will protest against that?

Mr. CELLER. Have we heard from the CIO?

Mr. GRAHAM. We are going to hear from them. We have used up 10 full days of hearing. Mr. Walter has made a very valuable suggestion, and it is this: That we go into executive session, that we call those from the Department of Justice who prepared this bill and, after having heard them, we prepare our own bill.

Mr. CELLER. I know you do not mind my expressing my opinion. I think we ought to hear Mr. Brownell in public session and the Department of Labor in public session, and the Department of Defense

in public session. These bills are of high importance, and I think that the Nation should know the views of those. I understand that Mr. Brownell has appeared before the Senate committee. I had not heard that he was appearing in an executive session. So if they are to appear in public session in the other body, they certainly ought to appear here. I do not think we should be treated like stepchildren.

Mr. WALTER. I do not know what useful purpose would be served in hearing Mr. Brownell. He did not draft these bills. He gave some people in his Department an expression of his views and desires. It seems to me that the way to arrive at what we are interested in is by asking to testify the people who drafted the measure.

Mr. CELLER. That is right, too, but supplementing that, we had Mr. Brownell appearing before us, speaking on a 10-point antisubversive proposal of the administration. These bills represent high policy. Very frequently we have officials high in the administration proclaiming their campaign against subversion, seeking, if I may say so, to take the ball away from a certain highly publicized gentleman in the other body.

Mr. GRAHAM. Mr. Celler, that is your own conclusion.

Mr. CELLER. I say that.

Mr. GRAHAM. We do not want that interjected. We have patiently heard these witnesses. We intend to hear the CIO. We have given 10 full days of hearings. Mr. Walter, in my judgment, has made a sensible suggestion, that we call the men who drafted this bill, hear them, and then draft our own bill, and no one should take exception to that.

Mr. CELLER. You do not mind my expression of views.

Mr. GRAHAM. I will tell you this: I do not intend to have you delay us any longer. There has been a purposeful delay on your part.

Mr. WALTER. Mr. Chairman, may I suggest that Mr. Nixon has had a great deal of time, and we have listened to him longer than we have usually given anyone else. It seems to me we ought to hear the CIO. Congressman O'Hara is not here.

Mr. NIXON. Will I have an opportunity to finish my statement?

Mr. GRAHAM. You may submit it.

Mr. NIXON. That has been done. Will I have an opportunity to complete it before this committee?

Mr. GRAHAM. We have answered your question. This has been a purposeful delay all the way through, and we know it.

Mr. NIXON. The record shows that is not true, and so far no witness has been permitted to complete his statement, and you have spent less than 4 hours on these bills up to this morning. I would respectfully ask to have an opportunity to complete my statement.

Mr. GRAHAM. You will not be heard further on this matter. You may be seated.

STATEMENT OF THOMAS E. HARRIS, ASSISTANT GENERAL COUNSEL, CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. HARRIS. My name is Thomas E. Harris. I am assistant general counsel of the Congress of Industrial Organizations, and I appear here on its behalf. It had been our intention that Mr. Arthur J. Goldberg, our general counsel, would appear. He, however, is tied

up in Pittsburgh on the collective-bargaining negotiations with the steel companies which are currently reaching a happy fruition.

I am, therefore, appearing as his substitute. With the committee's permission, I would like to submit for the record the prepared statements and then simply to summarize them orally.

Mr. GRAHAM. You will be permitted to submit your statements and then you may make such observations as you wish.

Mr. HARRIS. Thank you.

(The statements referred to follow:)

TESTIMONY OF ARTHUR J. GOLDBERG, GENERAL COUNSEL, CIO, ON BEHALF OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS ON HOUSE JOINT RESOLUTION 527

My name is Arthur J. Goldberg. I am the general counsel of the Congress of Industrial Organizations, and I wish to present the views of the CIO on House Joint Resolution 527. I want to thank the members of this committee for this opportunity to be heard.

I am also submitting to this committee today the views of the CIO on House Joint Resolution 528. In the course of my statement on that bill I have set forth at some length the record and position of the CIO on the subject of Communists in trade unions. I shall not repeat that record at this time, but shall simply say that it constitutes a remarkable demonstration of how effective a free, militant and democratic trade union movement can be in stifling the Communist conspiracy by methods thoroughly consistent with the due process safeguards of the Constitution.

The CIO is opposed to House Joint Resolution 527. It is our considered judgment that it serves no constructive purpose; on the contrary, it advances the very threat of totalitarianism which it decries.

SUMMARY OF THE BILL

This bill provides that whenever the President finds that the security of the United States is endangered, or that there is a disturbance or threatened disturbance of our international relations, he may issue rules and regulations to bar from access to any defense facility "individuals as to whom there is reasonable ground to believe that they may engage in sabotage, espionage, or other subversive acts."

The President may utilize such officers and agencies as he may choose to designate; no administrative machinery is set up by the bill itself.

An individual must be notified in writing of the charges against him and be given an opportunity to answer, including, if he requests it, a hearing.

The Government is not required to disclose its informants or other information which in its judgment would endanger its investigatory activity.

The individual may be "summarily" barred from access to the defense facility so long as charges are filed against him within 15 days from the time he is so barred. If he is finally cleared, he is to be compensated for his loss of earnings.

The term "defense facility" refers to the list to be designated under the Subversive Activities Control Act by the Secretary of Defense.

The bill contains no provision for judicial review.

OBJECTIONS TO THE BILL

1. This bill is entirely unnecessary for the protection of the national security. As I am sure this committee realizes, the Department of Defense has for several years maintained a vigorous security program with respect to all individuals who are employed on classified defense contracts. The Department has set up an Industrial Employment Review Board which processes security charges against all such employees and which requires defense contractors to remove from classified work any individual whom the Board finds to be a security risk. I might say that the CIO has worked closely and cooperatively with the component establishments of the Defense Department, in an effort to make this program a sound one from the point of view of protecting the legitimate interests of the Government without sacrificing the fundamental rights of the individual.

Furthermore, our experience in the trade-union movement has clearly shown that the individual workers in the plants are alert to this problem and will not

permit sabotage of defense facilities. The constant vigilance which loyal American workers exercise on the spot is a far sounder guaranty for the safety of the Nation's productive facilities than a Government loyalty program which is operated at a distance from the plant and by people having no personal familiarity with the individuals involved.

2. At a time such as the present, when there is a threatened disturbance to the international relations of this country, this bill could be used to blanket virtually the entire economy and to create a type of manpower control which the country never has found necessary even in the darkest days of war. Some agency or individual, not designated by the bill, would be given a tremendous concentration of power over the economic life and death of millions of workers who are performing in no more than a remote relationship to the defense effort. Thus, a truckdriver or clerk working on peacetime production for a company which is also engaged in defense work would be subject to the punitive provisions of the bill and to the real danger of being barred from all future employment.

3. The Government has now had a fair amount of experience in the administration of personnel security programs. Significant abuses of this program have been made public. Before there is any further extension of the security program to areas not now covered, particularly to employees in private industry who occupy nonsensitive jobs without access to classified information, it would be well to await a detailed analysis of the virtues and shortcomings of the Government's efforts in this field to date.

4. When one considers the personnel, time, and effort involved in administering the existing security programs for Federal employees and for employees of defense contractors, the fantastic burden of administering the program contemplated by this bill becomes apparent. The task of checking derogatory charges and information against every individual in every plant designated as a defense facility would dissipate the efforts of skilled people in the security field. As a consequency, the few real saboteurs about whom the country should have cause for concern would be likely to remain undetected.

5. The bill is unconscionably vague in that it deprives an individual of his livelihood on the basis of a reasonable ground to believe that he may engage in subversive acts. The term "subversive acts" is undefined and is subject to the gravest kind of distortion. There are still, unfortunately, some people in this country who regard unions themselves as subversive. American workingmen have had much bitter experience with false charges of subversion or sabotage, levied against the lawful activities of patriotic labor unions.

6. The bill denies an accused individual the right to confront witnesses making derogatory charges against him. Such a denial is diametrically opposed to the most basic concept of Anglo-Saxon jurisprudence, and serves only to encourage reckless charges by disaffected individuals against innocent people. The fact that the accused may eventually be cleared is in many cases virtually irrelevant; the provision of summary suspension without pay is itself equal to dismissal for many workers who do not have the resources to await the final verdict or to fight the charges. Such individuals must, instead, seek other immediate employment under the severe handicap of the suspicion raised against them.

7. This bill can go into effect only when the Secretary of Defense publishes a list of defense facilities. Surely such publication would be against the best interests of our national security and would serve as a directory of targets for would-be saboteurs.

CONCLUSION

In short, the CIO opposes House Joint Resolution 527 in the firm belief that it constitutes an unnecessary threat to individual freedom without adding any protection to national security.

TESTIMONY OF ARTHUR J. GOLDBERG, GENERAL COUNSEL, CIO, ON BEHALF OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS ON HOUSE JOINT RESOLUTION 528

My name is Arthur J. Goldberg. I am general counsel of the Congress of Industrial Organizations and I am appearing here today to present its views to this committee on the subject matter of House Joint Resolution 528. I am grateful to the committee for this opportunity to be heard.

The Congress of Industrial Organizations has long recognized that communism is a mortal enemy of free trade unionism and we feel that we have just cause to be proud of our successful record in fighting the efforts of Communists to infiltrate the labor movement. We are equally proud that this success has

been achieved without sacrificing any of the precious guaranties of the Bill of Rights.

Why then does the CIO come before this committee to testify against a bill whose avowed aim is to destroy Communist-infiltrated organizations, particularly since there are a few such organizations which compete with CIO unions for members? The reason is simple: We stand fundamentally opposed to any system of Government licensing of free trade unions. The bill's purpose can be and is being carried out without legislation. Licensing is a method of Government control similar to that utilized by Nazi Germany and Communist Russia as a means of wiping out free trade unionism in those countries.

Bills somewhat similar to House Joint Resolution 528 have already been introduced by Senators Butler and Goldwater, and by Congressman Velde. The executive board of the CIO gave considerable thought to the Butler, Goldwater, and Velde bills and issued the following statement, which I am setting forth here in full because of its applicability to the bill now under consideration by this committee:

"STATEMENT OF THE CIO EXECUTIVE BOARD ON THE BUTLER-GOLDWATER-VELDE BILLS

"(Meeting of March 22–23, 1954)

"The Congress of Industrial Organizations has always been opposed to communism or any other form of totalitarianism. We have always resisted, and will always resist in the future, any efforts by the Communist Party or any other totalitarian group to infiltrate the American trade-union movement.

"The preamble of the constitution of the CIO points out that 'We of the CIO are the sons and daughters of ancestors who came to America to escape absolutism in government, bigotry in religion, and economic exploitation * * *. We oppose all those who would violate this American emphasis of respect for human dignity, all those who would use power to exploit the people in the interest of alien loyalties.'

"Our attitude about communism has been expressed by scores and hundreds of leaders of the CIO. The late Philip Murray, president of the CIO from 1940 until his death in 1952, voiced this philosophy:

"'The Communist program for American labor is a program of destruction * * *. We are committed to the broadening of our democratic structure, not to its destruction. We are committed to orderly and constructive progress by labor in America; we are not and never will be committed to a policy that makes our movement the slave of a dictatorial state apparatus.'

"Walter P. Reuther, president of the Congress of Industrial Organizations, has pointed out:

"'The struggle between democracy and communism, between freedom and tyranny, is essentially a struggle for men's minds, their hearts, and their loyalty; and it can be won only in terms of demonstrating which way of life offers the best hope of satisfying man's needs and aspirations * * *.

"'We must nail the Communist lie that man needs trade freedom for bread, by proving that bread and freedom are compatible, and that the world that we are working to build will enable man to satisfy his economic and material needs within an ever-broadening framework of political and spiritual freedom.'

"The CIO has not been content merely to voice anti-Communist phrases. In 1949 the convention of the CIO, voting by an overwhelming majority, adopted procedures which led to the expulsion of 11 Communist-dominated unions from the CIO. In our reports expelling those unions, we expressed the conviction that the vast majority of the members of those unions were clearly not sympathetic to communism, but that a small clique had gained control of those 11 trade unions.

"The proof that our conviction on this matter was sound, and that the membership of those trade unions is completely loyal to the best democratic ideals of America, is indicated by the fact that almost three-fourths of the nearly 1 million members who belonged to the 11 expelled unions, have thrown off the yoke of their Communist organizations and their Communist leaders, and have returned to the CIO family of democratic trade unions.

"The constitution of the CIO is explicit on the subject of Communist-dominated unions. For instance, section 4, article 4, of our constitution provides: 'No individual shall be eligible to serve either as an officer or as a member of the executive board who is a member of the Communist Party, any Fascist organization, or other totalitarian movement, or who consistently pursues policies and

activities directed toward the achievement of the program or the purposes of the Communist Party, any Fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO.'

"Section 10, article 6, of the CIO constitution gives the CIO executive board the power to expel or take other appropriate action against any CIO affiliate 'the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist Party, any Fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO.'

"These constitutional provisions are a demonstration of the belief of all truly democratic trade unionists in the United States of America that the aims and aspirations of the Communist Party are clearly incompatible with those of the free and democratic trade-union movement.

"We recognize that eternal vigilance must be exerted by organized labor as well as by every other branch of our national society to resist infiltration by the Communist Party or its followers. The CIO executive board reaffirms its determination to practice strict enforcement of these and other sections of its constitution and bylaws.

"It should also be pointed out that almost all CIO unions have adopted constitutional provisions which bar Communists or Fascists from holding office in those organizations. These are not dead-letter provisions. These provisions, together with the alertness and determination of the membership, have prevented Communists from gaining positions of influence in the trade unions of the CIO.

"We are confident that these provisions, and the alertness and determination of the membership, will keep the Communists out in the future.

"The unions which were expelled from the CIO and which remain under Communist domination have, by the efforts of the CIO, been exposed, discredited, weakened, and in some cases, wiped out. A few of them continue to exist only because their membership is still confused or because of the narrow self-interest of unscrupulous employers, who are only too happy to deal with unions too weak to be militant. The CIO pledges that it will continue its fight against these Communist remnants until the last Communist agent is driven out of the trade-union movement and until the workers whose organizations the Communists once captured are given an opportunity to achieve genuine and honest trade-union representation.

"While any Communist Party control of any trade union is to be deplored and combated, Americans must see this problem in proper perspective. The unions that the Communists control are weak. Their members in overwhelming proportion are patriotic American citizens whose allegiance is to the trade union rather than to its Communist officers.

"That small number of Communist-led unions, whose strength is declining daily, is hemmed in by a large group of democratic unions which wage a constant educational campaign to show the members of the Communist organizations their mistake of continued affiliation with Communist-led unions. We are confident that this educational campaign will continue to be effective and successful.

"One factor, however, that would almost certainly not help this successful attrition process among the Communist-dominated unions would be passage by the Congress of ill-considered legislation to deal with the subject. As democratic trade unionists wholeheartedly pledged to our American form of democracy, we are convinced that Government regulation of trade unions, as proposed in the Butler, Goldwater, and Velde bills, would be a cure worse than the disease itself.

"The essence of all these proposals is for some Government agency to screen unions to decide whether they are Communist dominated, and to forbid the continued operation of unions found to be so dominated. That is the essential proposal embodied in the Goldwater bill, the Butler bill, and the Velde bill. They differ only in details.

"In our view, this is a most drastic and dangerous scheme. Two years ago, our late president, Philip Murray, in a letter to Senator Humphrey on this subject, declared:

" 'As a basic philosophy, we in the CIO believe that the right of American workers to choose their own collective-bargaining representatives is as fundamental to our democratic way of life as the right to speak, to worship, and to assemble freely with one's fellow men. Encroachments upon this fundamental right to choose collective-bargaining representatives should never be undertaken except after a showing that such encroachments are vitally necessary to our national safety.'

"The bills now before Congress would not merely encroach upon the rights of workers to choose their own unions; they would give the Government the power of life and death over all unions. Let us make no mistake about it: all of these bills propose Government licensing of trade unions. We do not believe that a free trade-union movement can exist under Government licensing of unions any more than political freedom can exist under governmental licensing of political parties.

"Why has the Communist Party been so signally unsuccessful in gaining strength in the American labor movement?

"In large part, because our democratic unions are independent of all outside control—including that of Government—and our members know and appreciate this. Working as part and parcel of our democratic system, our unions have been militant when militancy has been needed, and they have been constantly effective. Our unions have repaid many times the faith which the workers have invested in them. By contributing to the rise in America's living standards, our unions have proven themselves to be a continuous educational process—a process that explains to all the people that the American economy is flexible and capable of needed adjustments, and that our political society permits necessary change by democratic methods.

"No controlled labor organization in any Communist or Fascist nation has been able to even come close to matching the record of our free labor movement. No labor front, whether its title be Communist or Fascist, has ever won the wholehearted allegiance of its members as the democratic unions of America have won the support of American workers. The reason is that these labor fronts are not labor unions in fact. They have no independence; they are arms of their governments. They are the proof that inherent in these legislative proposals is the danger that the Government licensing authority will use its power of life and death over the unions to destroy or weaken any union regarded with disapprobation by the government in power. Even if this power were never abused, its bare existence would impair the independence and vitality of trade unions. They would not boldly and freely serve as vehicles to implement the views of their membership if any misstep could lead to extinction.

"To sacrifice the dividends of freedom now enjoyed by the members of our unions for the very grave disadvantages of Government control and regulation would be as illogical as it is unnecessary. To the same degree it would be a mighty victory in the Communist efforts to discredit free labor in America and the validity of our American democratic institutions. The masters of the international Communist conspiracy, acting from the standpoint of long-range strategy, would gladly exchange control of a few insignificant and weak Communist-led unions for Government shackling of our whole free trade union movement, just as they welcome any setback to America's healthy economy and expanding democracy.

"To wreck, through Government regulation, the whole edifice of American trade union democracy in order to try to deal with the control of a tiny handful of Communists in trade unions, is unreasoning. Democracy and free trade unionism are inseparably woven together in the fabric of our free society and one is not possible without the other.

"What, then, can we rely upon to protect America from Communist infiltration in the labor movement?

"First of all, we can rely upon the constant patriotism of workers and the overwhelming majority of their trade union leaders.

"Second, we can rely upon the effectiveness of free democratic labor unions to bring about the redress of economic grievances, thereby strengthening the entire society—and removing the basis for Communist propaganda and possible Communist successes.

"Third, we can rely upon necessary security measures to prevent espionage, sabotage, or treason. If present measures prove inadequate, they can and should be strengthened.

"Fourth, we can rely upon the commonsense vigilance of workers and their trade unions to resist Communist infiltration of their labor organizations.

"These factors upon which we rely are the sturdy foundation stones of our entire democracy. If we cannot rely upon them, we can never be secure—for they are basic to our American way of life. In adopting legislation to regulate trade unions, even for the worthy purpose of fighting communism, we are weakening one of the all-important bases of the democracy from which all of us derive our spiritual and moral and economic strength.

"Accordingly, we voice our strong opposition to the enactment of these bills."

ANALYSIS OF HOUSE JOINT RESOLUTION 528

At this point I should like to summarize briefly the significant provisions of House Joint Resolution 528. This bill supplements the Subversive Activities Control Act of 1950 and provides for the dissolution of "organizations which have been established for legal and legitimate purposes" but which have become "Communist-infiltrated."

A "Communist-infiltrated organization" is defined as one (other than a Communist-action or Communist-front organization), which (*a*) is substantially directed, dominated, or controlled by a Communist-action organization or a member or members thereof, and (*b*) is in a position to affect adversely the national defense or security of the United States.

A proceeding against an alleged Communist-infiltrated organization is initiated by the Attorney General's filing a petition with the Subversive Activities Control Board, which conducts a public hearing.

The heart of the bill is section 2 (d), which provides that in determining whether an organization is Communist-infiltrated, the Board shall take into consideration:

"(1) The extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, or are members of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act;

"(2) The extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act;

"(3) The extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of the Subversive Activities Control Act; and

"(4) The extent to which it is in a position to impair the effective mobilization or use of economic resources or manpower in connection with the defense or security of the United States."

If the Board finds that the organization is Communist-infiltrated it shall issue an order directing the organization "to dissolve and liquidate its affairs expeditiously." The Board's order may designate the individuals who shall handle the liquidation, and the Board, even before its order becomes final, may prohibit specified individuals from acting as officers of the organization.

After the Board's order becomes final, the organization may not use the National Labor Relations Board. Further, any union shop contract shall be automatically invalidated; and an employer shall be free to discriminate against any employee who attempts to compel recognition.

An aggrieved party may obtain review in the Court of Appeals for the District of Columbia by filing a petition within 60 days. Findings of the Board as to the fact, if supported by substantial evidence, shall be conclusive.

Objections of CIO

1. As was the case with the Butler, Goldwater, and Velde bills, our most fundamental objection to House Joint Resolution 528 is that it creates what is essentially a system of Government licensing of unions. As the late Philip Murray said in 1952:

"We believe that if the Government undertakes to determine what unions can represent workers in this country, it will have embarked upon the long trail toward Government control of unions. In the dictatorships of the world, unions exist at the sufferance of the state. We in America do not want to take a single step in that direction."

Such government control of who shall and who shall not represent employees perilously parallels the Soviet system of denying independence to trade unions. One of the fundamental distinctions between trade unionism in Russia and its satellite countries on the one hand, and the free world on the other, is that behind the Iron Curtain such organizations exist under the direction of and at the sufferance of the government. The provisions of this bill will, by giving the Government a substantial degree of control over the operation of trade unions, and to weaken and intimidate the entire labor movement.

2. This bill could be a lethal weapon in the hands of an antiunion administration. The mere publication of Government charges against an alleged Communist-infiltrated organization could well destroy the life of that organization. This would particularly be the case with charges brought against a union in the midst of an organizing campaign or strike. It would be many months before even the most baseless charge could be disposed of by the Subversive Activities Control Board, and by that time the atmosphere of suspicion generated by a responsible Government official would have worked irreparable damage.

Regrettably, these are days when serious and unfounded allegations come cheap.

3. The criteria for determining what is a Communist-infiltrated organization are dangerously vague. For example, section 2 (d) (1) refers to "persons who are active in * * * management, direction, or supervision, whether or not holding office therein." What does "active" in this context mean?

Section 2 (d) (2) refers to the furtherance or promotion of the objectives of communism. There have been instances in the past, as for example during World War II, when some of the objectives of the Communists and of loyal Americans have been the same. Under House Joint Resolution 528 it is possible that where a given objective of a legitimate organization chances to coincide with that of the Communist movement, such an organization would come under official condemnation as being Communist-infiltrated.

Section 2 (d) (3) refers to "the extent to which the positions taken or advanced * * * from time to time on matters of policy do not deviate from those of" Communist organizations. What does "from time to time" mean? If it means anything, it must include individuals who have not consistently adhered to Communist doctrine. This is dangerously and unnecessarily broad. When we in the CIO were faced with the problem of defining Communist-dominated organizations, we adopted a constitutional provision providing for union action against affiliates whose policies were "consistently directed toward the achievement of the program or the purposes of the Communist Party * * * rather than the objectives and policies set forth in the constitution of the CIO." On the record it is clear that this provision has achieved its purpose.

Although I am at this time confining my remarks to the questions of the desirability of this bill rather than its constitutionality, I think it is clear to you members of the Judiciary Committee that the examples of vagueness and broad delegation of legislative authority which I have cited raise serious constitutional questions.

4. This bill would place in the hands of irresponsible private individuals an insidious device for undermining legitimate trade unions. The files of the La Follette committee make it clear that there are unscrupulous people who file unwarranted allegations for the sole purpose of furthering their own ends. People with a grudge against a given union could submit false allegations to the Attorney General with regard to that union or one of its active members, which could cause the Attorney General to institute a proceeding under this bill.

5. This bill would burn down the house but let the rats go. The bill specifically refers to organizations "which have been established for legal and legitimate purposes" as the object of its punitive provisions. There is absolutely no penalty on the Communist infiltrators themselves.

The bill specifically excludes Communist-front and Communist-action organizations from its scope. Such organizations are dealt with in the McCarran Act which requires only that they register. Thus, if this bill were enacted, the Communist Party itself would continue to exist. Only the "legal and legitimate" organizations which have been infiltrated by the Communist Party would be liquidated. Surely, such a result cannot be justified by any considerations of national security.

Conclusion

Free trade unions are one of the firmest bulwarks of democracy, and their strangulation by Government edict or control has always been one of the earliest goals of all forms of totalitarianism.

The problem of Communist-dominated unions has been and is being successfully met by the trade union movement itself. The number and membership of unions with Communists in influential positions is diminishing steadily and rapidly.

To the extent that Communists infiltrate unions so as to affect national security they should be dealt with as individuals, rather than by dissolving the fabric of unionism and thus injuring the vast majority of patriotic workingmen who

comprise the membership of even those few unions which may be Communist-dominated.

The CIO stands ready now—as it always has in the past—to assist in every way it can in protecting the national security. It is our careful considered judgment, however, that this bill with its built-in threat to the survival of free trade unions would tend to destroy rather than protect the basic liberties which distinguish the free world from the slave.

Mr. GRAHAM. The quorum call has sounded. We are called to the floor. When we return, we will finish with your testimony.

(Short recess.)

Mr. GRAHAM. Proceed, Mr. Harris.

Mr. HARRIS. I will endeavor to summarize our position on these bills and to answer any questions the committee may have with regard to it.

First, as to House Joint Resolution 528, the CIO was opposed to this bill. We in the CIO have long recognized that communism is the mortal enemy of genuine trade unionism. We feel that we have cause to be proud of our successful record in fighting the efforts of Communists to infiltrate the trade union movement.

Further, we in the CIO are now in competition with unions which we consider to be Communist-dominated. There is today, for example, an election at the General Electric Co. in Schenectady with the CIO union, the IUE, on one side, and the Communist-dominated UE on the other side. We have spent a large part of our energies and resources in recent years fighting these Communist unions, and we will continue to do it until they are destroyed.

You might therefore think: Why do we oppose this bill? The reason we oppose it, put very simply, is this: We are opposed to any scheme of Government licensing of unions.

Mr. GRAHAM. Are you referring now to both bills?

Mr. HARRIS. No. I am referring now, sir, simply to 528.

That seems to us essentially a scheme of Government licensing of unions. Under it the Government would decide which unions could remain in business and which could not. In that respect it is like the Goldwater and Butler bills in the Senate and the Velde bill in the House.

Back in 1952, our then president, Philip Murray, wrote a letter to the Senate Labor Committee on a similar proposal at that time, and I would like to quote very briefly from what he said.

He said:

We believe that if the Government undertakes to determine what unions can represent workers in this country, it will have embarked upon the long trail toward Government control of unions. Under dictatorships of the world, unions exist at the sufferance of the State.

We in America do not want to take a single step in that direction.

This spring, the executive board of the CIO reconsidered this whole question and reaffirmed the position taken by President Murray in 1952. The executive board position was taken with respect to the Butler, Goldwater, and Velde bills. But what the executive board said would be equally applicable for the most part to this bill.

One thing that the executive board pointed out was—and this again is a brief quotation:

We do not believe that a free trade union movement can exist under Government licensing of unions, any more than political freedom can exist under Government licensing of political parties.

We feel, in other words, that once legislation is put on the books under which the Government decides whether a union is, or is not "kosher," whether it can, or cannot function as a union, that the power of the Government over unions is so great that they can no longer act independently, that they will be forced into a position subservient to the Governwent, a position of subserviency to the administration in power; we are afraid of that.

Mr. HYDE. Mr. Chairman, I have a question there.

Mr. GRAHAM. Mr. Hyde.

Mr HYDE. In effect, doesn't the Government license unions under present law, at least to the extent of determining which union shall be the recognized bargaining agent in any industry?

Mr. HARRIS. That, sir, I would say is something quite different. The Government provides for a Government-supervised election in which the workers of the plant, a majority of them, decide what union is to represent them.

Mr. HYDE. The Government makes a further determination than that, does it not? It determines which union is a bargaining agent under the law, from the standpoint, for example, of whether it truly is a nationwide union and truly represents that working group, does it not?

Mr. HARRIS. The Government, if asked, will conduct an election, and to conduct that election it decides in what unit to conduct the election, whether a plant, or all the plants of an employer, or a particular craft. But the selection in the election is made by the workers in the plant, by a majority in whatever unit the election is being conducted.

That seems to us completely in accord with the democratic system. For the Government to rule out certain unions and to say that the workers cannot choose this union seems to us something essentially different, and is in effect what goes on right now in Russia, where you have only one set of unions, and they are licensed by the Government, indeed run by it.

Mr. GRAHAM. Proceed, Mr. Harris.

Mr. HARRIS. That is the principal objection we have to this bill or any other like it, that it would give the Government a degree of control over unions which would not permit the existence of a free trade-union movement.

Secondly, we think that this bill could be used by an antiunion administration to destroy unions. Under this bill even the bringing of charges against a union might have so serious an impact on it as to destroy it.

Also, the bill provides that the Board can, before its order becomes final, remove men from the leadership of a union.

Now, we are fearful, say that a union might be involved in a bitter strike, that administration which was hostile to the union and sympathetic to the employer, the Attorney General might file charges under this bill, the Board might then remove the leadership of the union.

True, the union would have the right to fight the charges, to go through the lengthy court proceedings. But that might take years. The strike and the union might well be broken within a month or two from the time the Government stepped in. That certainly is possible here.

Thirdly, we think that the criteria for determining what is a Communist-infiltrated organization are dangerously vague. These criteria, I may say, are approximately the same as those now found in the Subversive Activities Control Act. We opposed that bill in part for precisely this reason.

For instance, the bill refers to persons who are active in the management, direction, or supervision of a union, whether or not holding office therein. Well, what does "active" mean? That is pretty hard to say.

Again, section 2 (d) (2) refers to the furtherance or promotion of the objectives of communism. There have been instances in the past, for example, say between June 1941 and the end of the war, when the Communists in this country were all for the defeat of Nazi Germany. That was a Communist objective in those days. It was an objective shared by a great many loyal Americans.

More of a criterion than that clearly is needed.

Section 2 (d) (3) again refers to:

The extent to which the positions taken or advanced from time to time on matters of policy do not deviate from those of Communist organizations.

In other words, a criterion on the basis of which an organization, a union is to be condemned is that the positions it has advanced from time to time do not differ or deviate from those of Communist organizations.

Now, here again there have been periods of time when the Communist Party, for its own purposes, has advocated measures likewise supported by non-Communists.

This language "from time to time" is particularly objectionable. That seems to me that the union need not consistently have taken the position of the Communist Party, or the same position of the Communist Party, that it is enough if it did it from time to time.

Mr. HYDE. Mr. Chairman?

Mr. GRAHAM. Mr. Hyde.

Mr. HYDE. That part bothers me a little bit, too, but I would like to ask you the same question I have asked other witnesses here.

Do you not think that all those considerations are modified, or, at least, more than that, controlled by the primary consideration found in the definition of a Communist-infiltrated organization on page 2, and that is (*a*) and (*b*) on line 11 there, that they have to be substantially directed, dominated, and controlled by active Communist organization members, and the organization would have to be in a position to adversely affect the national defense and security of the United States?

Do you think that if an organization supported some policy that happened to have been supported by the Communist Party, we will say like a graduated income tax, you do not contend that that would be considered to be something adversely affecting the national defense and security of the United States, do you?

Mr. HARRIS. I would suppose that the criteria set out in section 1 would have to be met, that is, that this would apply, in any event, only to an organization which is in a position to affect adversely the national defense or security of the United States, and also that there would have to be a finding that it was substantially directed, dominated, or controlled, and so on.

Those are quite vague, though, and it seems to me the purpose of section 2 (d), of the listing of the 4 items there which the board is

to take into consideration, is to give a little more definiteness to section 1. But it seems to me that these criteria set out for the board's guidance are themselves objectionably vague.

Mr. GRAHAM. That same objection was raised by other witnesses to which you refer there, Mr. Harris.

Mr. HARRIS. These objections I raised I am sure have been made by many witnesses and will be made by those hereafter if they come.

I believe that it is an objection which is in part inherent in this approach, because what this bill strikes at is not conduct, not specific acts, but ideas, beliefs, affiliations. And any bill which does that, I think, is going to be subject to this same objection that the criteria is vague.

Essentially, we think that is the wrong approach, that its conduct should be punished, not beliefs, affiliations.

Finally, we think that the penalties under this bill are extraordinarily severe. This bill provides for the dissolution of Communist-infiltrated organizations. It says it is dealing with organizations which have been established for legal and legitimate purposes but which have been infiltrated by Communists or fall under Communist control. It doesn't, however, provide simply for getting rid of these Communist infiltrators. It provides for the dissolution of the organization.

Now, this is in marked contrast wtih the Subversive Activities Control Act. Under that act, even the Communist Party, say, is made only to register, to file certain data, is deprived of certain privileges like the use of the mails and so on. That act itself does not provide for the dissolution of the Communist Party, and in the pending proceedings against the Communist Party, if the Government's position is ultimately sustained, no penalty can be inflicted on it as that provided in this bill.

Since this bill supposedly is dealing only with infiltration of organizations set up for legitimate purposes, it would seem that the penalty should be the removal of the infiltrators, not the destruction of the organization.

I would, before closing on this bill, like to make it clear, however, that these last points are relatively minor points; that we object basically to any scheme of having the Government decide what unions can function and what ones can't. That seems to us so drastic a measure that it should be undertaken only on the strongest showing of necessity, a showing of gravest danger. We do not believe that any such showing can be made.

We think that the problem of Communist-dominated unions has been and is being successfully met by the trade-union movement itself.

I take it you gentlemen are generally familiar with the history of the expulsion from CIO in 1949 and 1950 of some 11 unions as Communist-dominated. Those unions, since that expulsion, have dwindled. About half of them have disappeared entirely, the others have lost much of their strength. The UE was originally the largest and strongest of these unions.

If the IUE defeats it in Schenectady today, as we are confident it will, the UE will be well on the way to extinction. The Automobile Workers have recently defeated them at John Deere, International Harvester, and Moline.

This is a job, in other words, that we are doing ourselves. We don't think it calls for the sort of drastic Government intervention which this bill would provide.

The cure, in other words, we think is much worse than the disease.

Mr. GRAHAM. Mr. Hyde.

Mr. HYDE. There was a very interesting article today, Mr. Harris, the other day by a man who professed to be a so-called liberal, who said that one of the objections he had to the liberal's point of view on these subversive activities matter was that they objected to every piece of legislation that was introduced to cope with subversive activities, but never came forward themselves with any suggestions as to how to cope with them. He also thought, it was his opinion, that they were making a mistake in not recognizing that danger existed from subversive activities and in not making some proposals themselves.

Does your organization have any legislative proposals to make, that it recognizes the dangers from subversive activities?

Secondly, if it does, does it have any proposals as to how it could be handled?

Mr. HARRIS. We certainly recognize the danger exists. We favor dealing with it in general by penalizing specific acts of espionage or sabotage.

One of the Attorney General's bills, for example, is for the purpose of somewhat broadening the present espionage and sabotage laws. I haven't read that bill in detail, but in general we go along with that objective. We fully agree there must be adequate laws on the books for that purpose.

On the question of Communist-dominated unions, nobody knows better than we do that there are some Communist-dominated unions. We have been fighting them, as I say, for some years. We don't think that the danger from that situation is extremely grave, however, and we do think it is a situation that we can and are taking care of ourselves.

I should say that the membership of these unions is probably less than half now what it was 5 years ago. And they are on the road to inevitable destruction.

The danger to the country, to us, in other words—I heard you asking the witness who preceded me certain questions this morning, as to whether he supposed there were threats to the national security, and if so, from where. It is our conviction that there is certainly a very grave threat to the national security and that it comes from the armed forces of the Soviet Union. We make no bones about that.

As regards the Communists in this country, we do not think there is any threat that they are going to persuade a majority of Americans to their way of life. We do not think there is any threat that they will be able to overturn the Government. We think they are a threat only as they serve as a breeding ground for espionage or sabotage, as a recruitment point for possible acts of espionage or sabotage.

Mr. HYDE. I think that is the principal fear that motivates this legislation. I think the motive behind it is the same fear that you [illegible] that they fear any immediate overthrow, but for the [illegible] you suggest.

[illegible], however, that that sort of thing can be handled better [illegible] themselves than by the Government.

Mr. HARRIS. No, sir, not quite. We say it should be handled by laws punishing espionage and sabotage, not by having the Government decide what unions can stay in business and what can't.

Mr. HYDE. If we had to rely entirely on that, would we not be faced with the proposition of always having to wait until after the sabotage was committed?

Mr. HARRIS. That, of course, is not the only legislation on the books. You have the Smith Act, which makes criminal a conspiracy to overthrow the Government by force and violence. You have the FBI constantly at work infiltrating the Communist Party and keeping it under surveillance. If the FBI gets word that certain individuals are planning the overthrow of the Government by force and violence, or that they are planning sabotage or violation of the espionage law, that is a crime now.

This bill wouldn't deal with that at all. As a matter of fact, all this bill does is provide for putting out of business unions which the Government finds to have fallen under Communist infiltration.

This bill has only a very indirect bearing on sabotage and espionage. I am talking about 528.

Mr. GRAHAM. Mr. Harris, for your information, we have three bills dealing with what you are discussing, that is, sabotage, espionage, and the like. We have them before the full committee today.

Mr. HARRIS. I know that the Attorney General did submit a revision of the sabotage and espionage laws to, as he said, bring them up to date.

Mr. HYDE. Mr. Harris, what we are trying to get at is: We know that a group of people within a defense facility are controlled, let us say, assuming that can be proved, for the moment, by the Communist Party; and, of course, we also know that the Communist Party has as its objective sabotage and espionage and things of that nature; do you not think it would be wise that we try to have legislation through which we can deal with such persons, in such facilities, before they committed an overt act?

Mr. HARRIS. Under the Smith Act and other legislation against seditious conspiracy, there are already statutes for reaching these individuals.

Mr. HYDE. You submit that under the Smith Act, if you could prove the thing that I say that we fear from these individuals, you could convict them under the Smith Act as being persons conspiring to overthrow the Government by force and violence?

Mr. HARRIS. Yes, sir. If you could prove under the Smith Act that there were a group of individuals who were planning to sabotage the plant when the expedient moment occurred, you could convict them under the Smith Act.

Mr. HYDE. Could you convict them under the Smith Act if you knew they were just members of the Communist Party, working in this defense facility?

Mr. HARRIS. I think, myself, you could convict them under the Smith Act simply on proof they are members of the Communist Party, with knowledge of what the Communist Party is about.

Mr. HYDE. That has not been tried yet.

Mr. HARRIS. It seemed to me, sir, that the case in Maryland, with which you are no doubt familiar, that that was pretty much all that was proved there.

Mr. HYDE. Do you mean the Ash case?

Mr. HARRIS. The trial in Baltimore of the local leaders of the Communist Party there. It seemed to me nothing more was proved there.

Mr. HYDE. That has not gotten to the Supreme Court.

Mr. HARRIS. The Supreme Court denied certiorari, sir.

Mr. CELLER. May I inquire, Mr. Chairman?

Mr. GRAHAM. Mr. Celler.

Mr. CELLER. We do not outlaw or declare illegal the Communist Party, is that correct?

Mr. HARRIS. That is what the Attorney General says. It seems to me the Smith Act really does it.

Mr. CELLER. Of course, that may be problematical. But take these bills, these bills do not aim their shafts at the Communist Party or at a group of Communists who may call themselves the Communist Party. These bills aim their shafts at another group, which may contain a few Communists, and that is what is deemed to be a Communist-infiltrated union.

So you have an anomalous situation there, where you have a group that is replete with Communists; you have another group that may have only 1 or 2 Communists in it and yet you have a provision here whereby you can dissolve the latter and not the former.

Mr. HARRIS. That is true.

Let me make my answer a little more specific and accurate. The Smith bill does not provide for the dissolution of the Communist Party. What it does, in my opinion, is to make criminally punishable any member of the party who joins knowing what it is all about. I think you would have to prove knowledge of what the Communist Party was about, but given that proof I think it makes it criminal.

But it does not provide for the dissolution of the party. Neither does the Subversive Activities Control Act provide for the dissolution of organizations found to be Communist action organizations. But this bill does go that far. This is the only bill so far which provides for dissolution of the organizations which are found guilty. And that in a bill which deals not with the Communist Party but with organizations said to have been legitimately formed but which have been infiltrated.

I quite agree that the penalty here is out of all proportion on the objectives of the bill. It is quite inconsistent with the penalties provided in other respects in the criminal code.

It seems to me extraordinary that an administration which, as I understand it, has opposed dissolving the Communist Party, should propose a bill for dissolving unions.

Mr. GRAHAM. For your information, when the Attorney General was before us he opposed any bill outlawing the Communist Party. J. Edgar Hoover opposed it, too. I would say not only the Attorney General did, but also Mr. Hoover.

Mr. CELLER. I would rather go the whole way, dissolve the whole group rather than do it piecemeal. That is my personal view.

Mr. GRAHAM. Have you finished, sir?

Mr. HARRIS. I would like to turn briefly on the other bill, sir, 527.

Mr. GRAHAM. Proceed.

Mr. HARRIS. 527, as I understand it, would authorize the President in effect to extend a sort of Government loyalty program to employees in private industry in any defense facility. The bill is quite vague as to procedures or as to who is to administer it. It would authorize the President to set up such administrative machinery as he saw fit. There is no provision for judicial review.

The bill does make it clear that the Government is not to be required to disclose its informants or other information to the workers who may be deprived of their jobs.

Mr. GRAHAM. May I interrupt again, Mr. Harris?

Do you think there should be judicial review?

Mr. HARRIS. I don't think there should be such a loyalty program at all, sir, for employees of private industry, industry in nonsensitive plants.

There is no judicial review under the Government loyalty program, of course. The Government loyalty program likewise operates on the basis of undisclosed informants and secret files. The Government employee does not see the FBI file which is before the loyalty board. This bill clearly contemplates the same sort of procedure for workers in industrial plants.

We don't think that anything like this should be adopted.

Mr. HYDE. This is confined to defense facilities, 527, is it not? Is it not confined to defense facilities?

Mr. HARRIS. It is confined to defense facilities, this being the list which the Secretary of Defense is to promulgate under section 4 of the Subversive Activties Control Act.

As you, of course, know, the Department of Defense already has an industrial employment review board. It has in effect a loyalty board procedure for employees in industrial plants who have access to classified information. That is, if you take a GE plant, at say, the Knolls or at Schenectady, there is now a loyalty proceeding which applies to all employees of those plants who will have to have access to classified information, or access to areas in which confidential data is being kept.

So the purpose of this is not to get at plants where there is classified work; that is covered now. The purpose here is, I take it, to reach such installations as powerplants or railroads, where there is no classified work but which might in a sense be considered defense facilities.

And I take it that the purpose is to avoid possible sabotage.

It can't certainly be said there is no conceivable danger of sabotage, yet the past history suggests that it is not a very real danger. I think you would be hard put to it to find many instances of sabotage in this country by workers.

The Black Tom explosion which was engineered by the German Embassy is one thing. You are not, I think, very likely to find, say, a railroad worker in close touch and under the scrutiny of his fellow workers engaging in sabotage. That is an act of extreme desperation. It seems to me it is quite unlikely to occur; that at any rate, the danger of its occurring has not been shown to be so great as to warrant this sort of proposal.

Now, what would this mean?

Unless there is a list of defense facilities, this proposal doesn't mean anything. But if there is a list, and a comprehensive list, then it means that the right of American workers in private industry, having acccess to no classified information, is to be subject to the determination of a Government board; that this Government board is to go over a file on them and say whether they can work in those industries, or not. If the answer is "No," obviously a sort of blacklist is being built up. An employee fired as a sabotage risk is going to find it hard to get work anywhere.

This is a very extreme proposal, it seems to me.

In the Government—and I will say we don't think much of the Government loyalty program, we don't think much of the use of secret informants in it, or of data not revealed to the employee—but the excuse which has always been given for the Government loyalty program is that Government employment is a privilege, not a right. This goes back, I am afraid, to a statement of Justice Holmes in a case long ago that a man may have a constitutional right to engage in politics, but he doesn't have a constitutional right to be a policeman.

I think the observation is rather a shallow one and that it does not begin to dispose of the problem even as to Government employees. But certainly it has no application to workers in private industry, having no access to classified information. Their right to their jobs is not a privilege conferred by the Government; it is a right. Every man has a right to work. He has a right to seek employment and get it, if he can, without having that right passed on on the basis of secret information by some Government board.

The degree of Government control over workers which could be set up under this bill is far greater than was set up in the midst of World War II. No such rigid manpower controls as this were ever instituted by the Government, even under the stress of war.

Now, here again, if a person actually engages in sabotage, or if he plans it, he can be punished, punished criminally, punished severely. That surely ought to be enough without having prior Government scrutiny of his right to work on the basis of secret informants and secret evidence.

Mr. HYDE. Mr. Harris, I have another question right there.

Mr. GRAHAM. Mr. Hyde.

Mr. HYDE. What do you think, if anything, should be done to a person as to whom there is reasonable ground to believe may engage in sabotage, espionage, and other subversive acts?

Mr. HARRIS. Nothing more than is now being done. If he has access to classified information, there is a system which is now set up to bar him from that access. If he does not have it, we don't think there should be any kind of Government clearance whatever for him to hold his job.

This bill is coming down to a sort of work card which a worker is required to carry in Soviet Russia before he can get a job. That is what this amounts to.

Mr. CELLER. Do you think at the present time that if a man has such proclivities as my distinguished colleague has indicated, that he could be barred from a defense facility?

Mr. HARRIS. He can be barred from any defense facility where his work would involve access to classified information, or access to an area of the plant in which confidential information is to be found.

Mr. HYDE. How about access to a hearing at a plant where he could, by a simple toss of a monkey wrench, wreck it?

Mr. HARRIS. He is not now barred and I do not think should be. Anybody can go out and put a railroad tie on a railroad. Anybody can set fire to a wheatfield. Once we start worrying about the acts of damage that can conceivably be done by someone, there is no limit to the thing. We must hit a real balance between real danger and real security needs and the freedom of the individuals.

Mr. CELLER. How broad are the defense facilities, in your estimation?

Mr. HARRIS. That refers back to the Subversive Activities Control Act. It says the Secretary of Defense is to promulgate a list of them. When that act was passed, the Secretary of Defense—I believe it was General Marshall—said that he was going to have no part in promulgating a list of defense facilities, that obviously such a list would either be so broad as to be meaningless, or it would be a very handy thing for the Russians and the Communists to have, and that he was not going to promulgate a list. And to this day no list has been published. There is no such list.

This bill would be a dead letter, even if adopted, unless and until a list of defense facilities was promulgated.

Mr. CELLER. Let us project ourselves a bit into the future.

In your estimation, would a railroad be a defense facility?

Mr. HARRIS. I am sure the Attorney General so considers it, because in the literature which he put out explaining the supposed need for this bill, he said that was what it was needed for.

Mr. CELLER. Would an airfield be a defense facility?

Mr. HARRIS. I don't see why a wheatfield can't be a defense facility, when you get down to the sort of all-out, total war, the possibility of which we are faced with these days.

Mr. CELLER. The telephone company, its officers and other appurtenances, would they be a defense facility?

Mr. HARRIS. I should think certainly.

I believe the Attorney General's statement makes it clear he is thinking of powerplants, railheads, at least those items. He recognizes that the present system covers plants doing classified work. This proposal is for broadening that to plants not doing classified work. That is the reason for it.

Mr. CELLER. We have in New York a port authority which has control over tunnels and bridges and highways. Would they be deemed, do you think, defense facilities?

Mr. HARRIS. I should think unquestionably, sir.

As I understand it, the legal basis for the present system is the Government's power that when it makes a defense contract the contractor agrees to this type of security control of his employees. He agrees to the whole industrial security review board type of procedure, and he agrees to a Government loyalty program, in other words, for those of his employees who will have access to areas designated by the Government.

The purpose of this bill, as I understand it, is to extend this loyalty program to plants with which the Government has no contractual

relationships. That is why legislation is needed, if it is needed. We don't think it is.

But as I understand the Attorney General, that is the reason for the proposal.

Mr. CELLER. But the way it is worded, namely, the use of defense facilities without any limitations might conceivably not only take in the facilities that we mentioned, like a railroad or a bridge or a tunnel, telephone company, but, as you indicated, it might even be made to stretch so far as to cover a wheatfield?

Mr. HARRIS. I should think it would take in any activity essential to our economy in time of war.

As I say, the Defense Department has not put out any such list of facilities. I called them up a couple of weeks ago when I saw this bill, and they told me they had not put out any list. I asked whether the old decision not to put out a list had been overturned, and my informant, who was a relatively level gentlemen, said he did not know. that he had no idea whether Secretary Wilson disagreed with his predecessor's and meant to publish a list of facilities.

A question which it seems to me would be pertinent to ask the Attorney General is whether he has cleared this proposal with the Defense Department, and whether it means to put out a list of defense facilities. If it doesn't, if it is going to adhere to its position of the last 2 or 3 years, that it is not going to publish any such list, this bill is just a waste of paper, as is that section of the Subversive Activities Control Act.

Now, this is an altruistic suggestion on my part, as I would much rather have this bill be just wastepaper.

The Government loyalty program, we think, as applied to nonsensitive jobs, has been far more trouble and has led to abuses out of all proportion to any benefit derived from it. If you have followed the number of employees of subversive dispositions turned up by the Government loyalty program, it is practically zero. There have been thousands upon thousands of investigations. The one or two spies in the Government who have been turned up were never caught by the Government loyalty program. I believe there is only one case of a spy—no, I don't believe there is a single case, save Alger Hiss was cleared repeatedly by Government loyalty programs; Judith Coplon in the Department of Justice, she was repeatedly cleared by Government loyalty programs.

They are burdensome, they intimidate the employees, their utility from any security standpoint is extremely doubtful.

Certainly when the validity of the program as to the Government itself is so dubious, it ought not to be extended to the millions upon millions of workers in private employment who do not even have access to classified data.

If the bill is to be meaningful and if there is to be a broad list of defense facilities, including transportation, powerhouses and so on, the size of the FBI would have to be multiplied many, many times to handle what this proposes.

Now, it may be that the administration doesn't propose to put out any list of defense facilities; it may be that they simply want you gentlemen to pass a bill that looks like it will do something when they have no intention that it will do anything; but if the bill means what it purports to on its face, it is an extremely dangerous and far-reaching measure, and we urge that it be rejected.

I thank you for this opportunity to appear before you.

Mr. GRAHAM. Thank you, Mr. Harris.

I would like to introduce into the record some telegrams.

We have a telegram addressed to Congressman Walter, signed by John W. Fisher; president of UE Local 630 of Sunbury, Pa.

We also have a similar telegram addressed to Congressman Celler, signed by Cameron & Kahn, 109 Greenwich Avenue, New York, N. Y., protesting against the bill.

They will be placed into the record at this point.

(The documents referred to are as follows:)

SUNBURY, PA., *June 25, 1954.*

Congressman FRANCIS E. WALTER,
House Office Building:

Brownell-Reed bills House Joint Resolutions 527 and 528 are extreme antilabor measures giving arbitrary life-and-death control of unions to Government Board. Organized labor AFL-CIO and independent is on record opposing such legislation. Criticism of bills also appears in June first Wall Street Journal. Union members seeking decent employment and wages resent outside interference from anti-union forces in behalf of UE Local 630. Union officers urge opposition to these bills. Urge full hearings by Judiciary Committee.

JOHN W. FISHER,
President, UE Local 630.

NEW YORK, N. Y., *June 29, 1954.*

Congressman EMANUEL CELLER,
House Office Building, Washington, D. C.:

Following is a copy of telegram sent to Congressman Graham "as publishers concerned with freedom of press and publications we respectfully request time to testify before the House Judiciary Committee on Reed bills House Joint Resolution 528 and House Joint Resolution 527."

CAMERON & KAHN.

Mr. GRAHAM. We also have a letter addressed to the chairman of the subcommittee, signed by Robert L. Condon, our colleague from California, protesting against these bills.

That letter will appear in the record at this point.

(Letter referred to is as follows:)

HOUSE OF REPRESENTATIVES,
Washington, D. C., June 29, 1954.

Re House Joint Resolution 527 and 528

Hon. LOUIS E. GRAHAM,
House of Representatives,
Washington, D. C.

DEAR JUDGE GRAHAM: I have discussed the above bills with our colleague, Mr. Eberharter, of Pennsylvania, and was quite impressed with the position and statement that he made before your committee. I have received a number of communications from trade union officials and others in my district, who are greatly concerned that these two bills might disturb long-standing labor relations which are, in the main, quite mature.

I have the feeling that both the above-entitled bills embark upon fields which may not have been fully explored, and which may have dangers to the collective bargaining principle and the very existence of existing labor organizations.

I do not wish to burden your committee with a request to testify, but I would like to make known my concern and opposition to the measures in their present form. I hope that your committee will give the measures a full hearing and allow all persons who may be interested the right to testify.

I would appreciate it if you would make this letter a portion of the record before the committee.

Very truly yours,

ROBERT L. CONDON,
Member of Congress.

Mr. GRAHAM. During these hearings we heard from a labor union known as the American Communications Association. In that respect we find that on May 29, 1953, the chairman of the Internal Security Subcommittee of the Committee on the Judiciary, of the Senate, Senator William E. Jenner of Indiana, addressed a communication to the chairman of this committee, Representative Reed of Illinois.

I am going to include that important communication into the record of today's hearings.

(Letter referred to is as follows:)

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
May 29, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
United States House of Representatives, Washington, D. C.

DEAR CONGRESSMAN: On Tuesday, May 26, during the course of a hearing on internal security, a situation developed which related to the internal security of the country. I summarized it as follows:

In 1951, the Internal Security Subcommittee of the Senate Committee on the Judiciary held extensive hearings on the American Communications Association. In those hearings, the Communist control over that labor organization was amply established. This American Communications Association is now the certified bargaining agent for some approximately 5,000 employees of the Western Union Telegraph Co. in the metropolitan area of New York City, some 200 employees of the Western Union Cable Co. of New York City, for RCA communications on the east and west coasts, and for employees in certain broadcasting stations, mostly in New York and in Philadelphia.

Recently, a National Labor Relations Board secret ballot election, among Western Union employees in New York City, was held on May 19, 1953, when the employees voted, 2,421 to 1,619, in favor of the American Communications Association, as against the American Federation of Labor.

Another National Labor Relations Board election is now being held among approximately 1,800 employees of the American Cable & Radio Co. and the American Communications Association is on the ballot. The results of this election are to be announced on the 28th of May.

This Internal Security Subcommitte has taken cognizance of this situation at this time in view of the following facts found after preliminary survey by the staff of this subcommittee:

The main office of the Western Union Telegraph Co. is located in the Western Union Building at 60 Hudson Street, New York, N. Y. Telegraph circuits to all major cities in the United States terminate in or relay through this building. Telegraph messages of all kinds are handled by the employees, the majority of whom are members and under the control of the American Communications Association. Many of the messages are Government messages. For example, the following Government agencies are served by telegraph circuits, tie lines, connecting the main Western Union office and the agency offices. The following is a partial list of these circuits: United States Defense Department Signal Center of the First Army Headquarters, Ft. Wadsworth; United States Naval Air Station, Floyd Bennett Field, Brooklyn; New York port of embarkation in Brooklyn; United States Naval Shipyards, Brooklyn; Sea Transport Station, Atlantic Division, Army Piers 1, 2, 3, and 4; United States Navy Naval Communications Service, 90 Church Street, New York; Governors Island and Ft. Jay, Second Service Command.

The importance of the Western Union Telegraph Co. and the Western Union Cable Co. in our country's defense program can be judged by the following which appeared in the company's annual report for 1952: "More deep-sea amplifiers were placed in service, further increasing international cable capacity. Increased service requirements of the Armed Forces, other governmental departments, and defense industries were fully met. Of special importance was the expansion of the extensive leased communication systems furnished by Western Union for governmental and other large customers. The company was awarded Government contracts by the Air Force, the Navy and the Signal Corps for the development of special electronic equipment and for other projects, involving a total of $6 million."

The Senate Internal Security Subcommittee takes cognizance of this situation as possessing a threat to the internal security of this country.

Yesterday, the Senate Internal Security Subcommittee met with Ivar Peterson, Acting Chairman of the National Labor Relations Board and Members Abe Murdock and John Houston, and entered into executive discussion. A copy of the transscript of that discussion is attached herewith.

At the termination of this session, as chairman of the Internal Security Subcommittee, I made the following recommendations:

1. That the whole matter be brought to the attention of the President of the United States;

2. That the NLRB not certify the American Communications Association as the bargaining representative of the employees of Western Union and the American Cable and Radio Co.

3. That in view of the NLRB's objection that they could not withhold certification without possibly being held in contempt of the district court, the NLRB obtain a stay from Judge Letts which would enable it to withhold certification of the ACA as a bargaining agent.

4. That appropriate legislation, now pending before the Congress which would remedy the present situation, be expedited.

Accordingly, as chairman of the Internal Security Subcommittee, I ask that you give consideration to the enactment of whatever legislation there is before your committee that would remedy the present danger to the country.

Sincerely,

WILLIAM E. JENNER,
Chairman, Internal Security Subcommittee.

Mr. GRAHAM. Mr. Harris, before you go, is there anything that you have not stated or included in Mr. Goldberg's statement that you would like to have included here?

Mr. HARRIS. I would like to have the statement incorporated. I think it goes a little more in detail into the bills.

Mr. GRAHAM. We also have for insertion in the record a statement by George Meany, president of the American Federation of Labor.

(Material referred to is as follows:)

STATEMENT BY GEORGE MEANY, PRESIDENT, AMERICAN FEDERATION OF LABOR, ON HOUSE JOINT RESOLUTIONS 527 AND 528, CONCERNING THE INTERNAL SECURITY OF THE UNITED STATES

There is no more challenging issue confronting the free world in its current fight for survival against Communist tyranny than the problem of internal subversion.

What are the appropriate policies for a free people to adopt in dealing with those for whom freedom is but an invitation to subversion? Certainly, democracy cannot stand idly by and allow its liberties to serve as the means for its own destruction. Equally certain, however, democracy's efforts to protect its internal security must not lead down the path to a police state. The development of practical public policies on this issue constitutes a real test of our democratic way of life.

These considerations must give perspective to the various proposals now before this committee. A wide variety of legislative remedies have been put forward in recent months. In this statement we deal particularly with House Joint Resolutions 527 and 528 concerned with the activities of Communist individuals and Communist-infiltrated organizations which threaten the security of the United States.

While these bills do not specifically mention labor unions, it has been freely stated that they have been designed in large measure to bring Government action against Communist-dominated unions and Communists who have captured positions of responsibility in unions. As the largest labor organization in America with a membership of over 10 million, and as one which has relentlessly fought communism for many years, the A. F. of L. has a particular interest in this question.

The views of the American Federation of Labor toward communism are too well known to require extended comment. From the very establishment of Soviet rule in 1917, the A. F. of L. has recognized the true nature of com-

munism and has sought to expose the efforts by the Communist international movement to penetrate the free-trade unions. To the A. F. of L., it has always been quite clear that Communists and organizations captured by them are nothing other than the agents of a foreign power dedicated to the overthrow of the American form of government.

Although Communists and Communist-dominated unions may profess to support the aspirations of American workers, this attitude has always been used to conceal their real motives. They have been interested in the welfare of American workers only as the basis for extending Communist influence and for furthering the aims of the Soviet Union. The shifting tactics of Communist labor leaders during the past 30 years, their sudden switches from open warfare to attempted cooperation with the bona fide labor movement and back again, is ample evidence that Communists are interested only in fostering their own specific objectives and not in serving the interests of the American workers.

The A. F. of L. is proud of its record in fighting and exposing this Communist duplicity. We have worked tirelessly both at home and abroad to thwart the aims of the Communist worldwide conspiracy.

Our efforts have helped to make Americans today more alert to the danger of communism. We feel that we also have a substantial share of responsibility for the fact that the number of Communists and the extent of Communist influence today is far below what it was 10 or 20 years ago.

In the meantime, however, the threat of communism has increased as the Soviet Union, and now Communist China, have developed greater industrial and military resources. For this reason, we must not minimize the danger that comes from even a small number of Communists and Communist-dominated organizations.

There are today a number of national unions completely under Communist domination. We estimate that these unions include from 300,000 to 400,000 members. Of course, by no means all of these workers are either Communists or even Communist sympathizers. But their organizations are in captivity of Communist leaders. These are the unions that were expelled by the Congress of Industrial Organizations in 1949 and 1950 but which are still in operation today.

The largest of these unions have membership and collective bargaining agreements in such vital industries as electrical equipment; electronics manufacturing; copper; lead and zinc mining; longshoremen on the Pacific coast; wireless communications; and a number of vital industries in Hawaii. It is obvious to us that Communist strength in these industries presents a threat to the security of the United States.

On the other hand, we must be careful not to exaggerate the importance of Communist influence. On the whole, Communist unions have been losing membership and representation rights. At the time of their expulsion from the CIO, the membership of Communist-dominated unions totaled over 500,000. This has been substantially reduced. Of the 11 unions which were expelled, 5 are no longer in existence, having been either disbanded or merged with other Communist unions. Of the remaining 6, 2 represent only a small number of workers.

The A. F. of L. and, in recent years, also the CIO have both energetically devoted themselves to fighting these Communist unions. In many cases, they have been successful. One example is the electrical industry where the Communist union has lost a number of critical NLRB elections.

In a few cases, the workers involved, although staunchly non-Communist, have refused to abandon the union which they felt, however mistakenly, was serving their interests. Recently, in Butte, Mont., the copper miners of one of the largest copper companies voted to retain as their representative a Communist-dominated union in preference to a non-Communist CIO competitor.

Labor's fight against Communist domination of unions has been carried over the years. It cannot be won overnight. There is no doubt that the exercise of proper public responsibility in removing Communists from positions of control is needed. It is necessary, however, to examine with utmost care the nature of such intervention in order to accomplish the purpose without violence to the principles of democracy in which we believe, and without impairing the freedom and independence of American labor.

COMMUNIST INFILTRATION OF LABOR UNIONS (H. J. RES. 528)

One of the administration-sponsored bills now before this committee, House Resolution 528, is designed to enable the Government to deal with this m through the machinery established by the 1950 Subversive Activities

Control Act. This bill has as its stated objective the dissolution of any labor union (or other organization) which is both (1) infiltrated by Communists and (2) presents a threat to the national security of the United States.

We are in accord with this bill's objectives, but question the means through which it would carry them out. A careful examination of the bill convinces us that many of its provisions are far from sound and that, in fact, the fight against Communist-dominated unions would be retarded rather than furthered by the passage of this bill. We therefore strongly oppose the enactment of this legislation.

Two major considerations lead to this conclusion.

1. While the authors of the bill naturally have no such intent, there is real danger that the provisions of this bill could be readily directed against legitimate trade-union organizations.

The charge of communism is often loosely made and on many occasions has been directed against legitimate labor unions. Because unions must from time to time resort to public protests to gain just ends or defend a minority view, or because a union organization campaign may involve a conflict of ideas, ill-informed or malicious individuals frequently try to arouse antiunion sentiment by attacking union representatives or particular labor organizations as Communist. If such attacks were to be given credibility and force by an official charge of Communist infiltration, under such circumstances, the status of a bona fide union might easily come into jeopardy.

Under the bill, charges against organizations are initiated only by the Attorney General. While we are confident that the present Attorney General would not use the proposed law to injure legitimate labor unions, it is quite conceivable that such an official hostile to labor might utilize such a law as a weapon against all unions.

Moreover, the procedure proposed in this legislation would necessarily involve the Government in the most detailed decisions affecting union policies and administrative machinery. In the proposed legislation, the "liquidation" of Communist-infiltrated unions would require the Government to decide such intimate union and collective-bargaining questions as the disposition of union funds, continuation of a pension plan, and modification of collective-bargaining agreements. Even if action is directed solely against Communist unions, a precedent is established for future use against legitimate organizations.

2. We have very real reservations as to whether this bill would actually hinder the operation of Communist unions.

We would like to point out the extended period of time that would be necessary under this bill before any Communist-dominated union would actually be dissolved.

To begin with, the determination that a union is a "Communist-infiltrated organization" is based on the extent to which its personnel, funds, and policies are tied up with "Communist action" organizations. Thus, action against a Communist-infiltrated union can be taken only after the Government's present case against the Communist Party as a "Communist-action organization" has been finally adjudicated by the courts. At the present time, there is outstanding a finding and order issued April 20, 1953, by the Subversive Activities Control Board that the Communist Party is a Communist-action organization. However, in accordance with the provisions of the law, the Communist Party appealed this order to the Circuit Court of Appeals for the District of Columbia. Although this case has been argued, a decision has not yet been issued and is probably unlikely until the fall. Since any decision by the circuit court will be appealed to the Supreme Court, the final adjudication of this case is unlikely until the spring of 1955 at the very earliest.

Moreover, even when the Subversive Action Control Board is free to proceed against a "Communist-infiltrated organization," it will require an additional 18 months to 3 years before a case against a particular organization could be finally adjudicated in the courts. This timetable is so lengthy because the bill quite properly includes numerous procedural safeguards to protect the personal freedoms of the officers and members of any organization charged as Communist infiltrated. These safeguards include notice of charges, public hearing by the Board, representation by counsel, opportunity to present evidence and cross-examine witnesses, published findings by the Board, and full judicial review, only after which the Board's order becomes final.

There is still another obstacle to effective action under this law. The bill's provisions are centered around a final order directed against a specific organization. Communists are notorious for their tactical ability to disband one organi-

zation in favor of another. Is it not likely that the objectives of the bill could be thwarted by Communist action in disbanding a particular organization under attack in favor of a new group, perhaps with different officials, which performs the same function?

These reasons lead us to a considerate conclusion that passage of House Joint Resolution 528 would neither assist labor in its fight against Communist domination of unions nor itself deal effectively with the problem of union domination by Communists. Hence we ask that the proposed bill be rejected.

ESPIONAGE AND SABOTAGE (H. J. RES. 527)

The purpose of House Joint Resolution 527 is somewhat different from that of House Joint Resolution 528. This bill deals not with organizations but with individuals. Its objective is "to provide for the protection of defense facilities" by denying access to these facilities to those who might utilize this opportunity to injure the security of the United States.

In view of the insidious character of the Communist threat to our national security, it is proper to protect our country's defense and other key production facilities against possible sabotage or subversion. A somewhat similar law is now in effect governing access to ships, docks, and waterfront facilities (Public Law 679, 81st Cong.). Administration of this statute operates through a series of hearing panels on which organized labor is represented.

In addition to this law, statutory authority is also provided giving the Defense Department opportunity to bar possible subversives from plants and facilities of defense contractors. The proposed bill is designed to extend this form of authority to other privately owned plants not holding Government contracts, but which nevertheless are essential to our national security. Powerplants, transportation, and communication facilities might be possible examples of enterprises that might be within the scope of the proposed law.

While we are in accord with the objectives of this legislation, we feel compelled to oppose this bill because it fails to provide the necessary safeguards to protect individuals who may be affected by its provisions.

The following are our specific criticisms of this bill:

1. The bill does not contain any requirement for a system of tripartite appeal boards

There should certainly be some check on a possible arbitrary or unlawful action on the part of a hearing officer. We feel that the best solution to this problem would be the establishment of tripartite appeal boards consisting of representatives of labor, management, and the public, to which appeals could be made from the decision of the hearing officer. This arrangement has operated very effectively in the administration of Public Law 679 concerning the security of vessels and waterfront facilities. It is essential that any procedure followed by the Government in this field embody a proper appeals procedure. In industry a tripartite appeals board is the only method to safeguard effectively the rights of persons concerned.

2. We question the procedure of discharge without a hearing

There is wide opportunity for grave abuses under this provision. Even in extreme cases it would be preferable to provide for some type of preliminary hearing in which the accused can at least be informed of the charges against him and given an opportunity to answer them before he may be discharged or barred from employment.

3. The bill fails to assign specific agency responsibility for handling this program

The bill states in the broadest terms that "the President is authorized to institute such measures and issue such rules and regulations as may be necessary" to carry out the objective in the bill. We feel strongly that a specific delegation of authority to the agency to be responsible for this program should be written into the statute.

We regard this point as extremely important. We believe that the statute should firmly fix the responsibility for the administration of this program within the executive branch and assure orderly and fair procedures in carrying it out. The present bill leaves the entire procedure to the discretion of the President. Such a broad delegation would leave an innocent person without the most elementary safeguards. It would make it possible, for example, for the President or his agent to prescribe rules and regulations governing the hiring of individuals in defense plants, giving the foremen in the plant or other supervisory

officials the responsibility for judging whether a person shall be summarily barred. The law should establish clear safeguards against gross procedural abuses of this kind.

4. The bill's provisions regarding the disclosure of information are inadequate

According to the provisions of the bill, any investigatory organization of the United States Government would not be required to "disclose its informants or other information which in its judgment would endanger its investigatory activities." While we recognize that there are instances in which the names of informants have to be withheld, we believe that these should be kept to a minimum. Moreover, in the establishment of an equitable system of appeals boards which we recommend, we believe that members of these boards, after the proper security clearance, should be given access to this classified information.

Furthermore, the bill does not make it clear whether the words "investigatory organization" includes investigating committees of the legislative branch of the Government. We believe that evidence in such cases should come from the executive branch of the Government and handled through its appropriate investigatory agencies even where such information might have originated in the legislative branch.

5. The bill includes no standards to guide the administration of the program

The language of the bill indicates that individuals may be barred from defense facilities when "there is reasonable ground to believe that they may engage in sabotage, espionage, or other subversive acts." There is nothing in the bill to define the phrase "reasonable ground." It is essential that such standards be included in the law so that the drastic penalties in the law are not inflicted in an arbitrary or capricious manner to injure innocent persons.

6. The penalties are too broadly applied

As the bill now reads, it is a felony to "violate any rule, regulation, or order issued pursuant to the act." Presumably it is the purpose of this provision to insure compliance with a final order of disbarment. According to the language of the bill, however, it may be possible to apply this harsh penalty to noncompliance with any intermediary order or a minor procedural infraction.

It should be noted that the procedural safeguards we recommend are just and proper. We submit that they are reasonable recommendations designed to safeguard our national security in a way in which the essential rights of America's citizens would be protected.

The AFL believes that Congress should strengthen the internal security of the United States, but do so without endangering the basic freedoms that we cherish in our democracy.

Mr. CELLER. Mr. Chairman, I would like to offer for the record two editorials, one from the Courier-Journal of Louisville, and one from the St. Louis Post Dispatch.

Mr. GRAHAM. They may appear in the record.

(Material referred to is as follows:)

Risk in Brownell's Labor Plan

From The Louisville Courier-Journal

Attorney General Brownell blueprints a new weapon which in its way is as startling as any bomb. Mr. Brownell proposes to give the Government power to dissolve a labor union or a private enterprise or association if it is found to be infiltrated by Communists. Judgment in the case would be that of the Subversive Activities Control Board.

Ordinarily, such a idea would speak for itself. Its danger for oppression and destruction, both actual and moral, ought to be as plain as the nose on a face. However, the country has had too many warnings in recent years — indeed, in the day at hand—of fear and hysteria inflamed out of reason, beyond truth, beyond the seeking of truth.

Mr. Brownell gives a nod toward the principle of due process of l: fearful mood has b If the Government dering to this mo self safe in conce of powerful hands

We have in min of Justice Hugo . from a Supreme aliens may be de bership in the C suppose as long a one word (Comm "everything may have an idea that American is at sta

We have in mi crans in Norwalk, ago. They would ple of their comm informers upon or the travesty and

French

Senate committee h leans, when a pro ciat, Paul Crouch, smear with insinua persons whose lives tified to their loyal diate hour, there is the show of condemnation out of hand, the thing which has come to be known as McCarthyism.

On May 20 the ST. LOUIS POST DISPATCH reprinted the editorial below.

Dangers Lie In Mr. Brownell's Plan

ATTORNEY GENERAL BROWNELL blueprints a new weapon which in its way is as startling as any bomb. Mr. Brownell proposes to give the government power to dissolve a labor union or a private enterprise or association if it is found to be infiltrated by Communists. Judgment in the case would be that of the Subversive Activities Control Board.

Ordinarily, such an idea would speak for itself. Its danger for oppression and destruction, both actual and moral, ought to be as plain as the nose on a face. However, the country has had too many warnings in recent years—indeed, in the day at hand—of fear and hysteria inflamed out of reason, beyond truth, beyond the seeking of truth.

Mr. Brownell gives a nod toward the principle of due process of law. A troubled and fearful mood has blunted that principle. If the government goes itself into pandering to this mood, who may feel himself safe in conceivable circumstances of power in hands of the unscrupulous?

We have in mind warnings like that of Justice Hugo Black in his dissent from a Supreme Court ruling that aliens may be deported for past membership in the Communist party. "I suppose as long as you can throw that one word (Communism) in," he said, "everything may be all right. But I have an idea that the liberty of every American is at stake."

We have in mind the activity of veterans in Norwalk, Connecticut, a few months ago. They would have turned the people of their community into a mass of informers upon one another. There is the travesty and injustice of a recent Senate committee hearing in New Orleans, when a professional ex-Communist, Paul Crouch, was permitted to smear with insinuation the names of persons whose lives and traditions testified to their loyalty. For the immediate hour, there is the *show* of condemnation out of hand, the thing which has come to be known as McCarthyism.

Mr. Brownell makes his proposition to take the place of the non-Communist oath required of labor union officers by the Taft-Hartley Act. But this part of the labor-management law is long ago discredited. The Attorney General talks of difficulty in enforcing it, pointing to only one conviction in seven years. We daresay that the difficulty is not one of legal process, but rather of overcoming deep and natural American qualms.

There is also the knowledge that organized labor itself has done a good job getting rid of groups of questionable leadership. Either by expulsion or competition the process of weeding out has succeeded. Few hardcore radicals like Ben Gold of the Fur and Leather Workers remain, and these are on the outside.

Nor have Americans generally failed to feel the argument which appeared in the President's own approach to the non-Communist oath. Administration proposals for amending the Taft-Hartley Act pointed out unfairness in applying the rule to a single group, the unions. The solution proposed was (1) to apply it to employers as well as workers, (2) to cut out the requirement altogether, and look to "broad general legislation" to control Communism.

It is to be hoped, however, that the Attorney General's idea is not the Administration's "broad general" plan. If it is, we might have a remedy potentially worse even than the disease. The fact that two bills already have been introduced in the Senate at Mr. Brownell's request gives an urgency to our misgivings.

THE COURIER-JOURNAL, LOUISVILLE, KY.
MAY 12, 1954.

Mr. CELLER. Mr. Chairman, I have a letter from the Bar Association of the District of Columbia. They apparently indicate they have not had sufficient time to make a study of the bills.

The New York County Lawyers Association says:

This matter has been considered by our committee on civil rights and is at present before the board which will not meet until the fall.

The American Bar Association indicates that the bills were referred to the association's committee on Communist tactics, strategy and objectives for consideration. Apparently there has been no report from that committee.

I ask these be put into the record.

Mr. GRAHAM. They may appear in the record at this point.

(Material referred to is as follows:)

BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D. C., June 23, 1954.

Hon. LOUIS E. GRAHAM,
Chairman, Subcommittee No. 1, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN GRAHAM: I acknowledge receipt of your letter of June 21, 1954, enclosing copies of House Joint Resolution 527 and House Joint Resolu-

tion 528 which are now under study before your subcommittee. You state that the committee decided on the morning of June 21, 1954, to invite the bar association to send a representative to give testimony in regard to this legislation on Wednesday, June 30, 1954, at 9:30 a. m.

I have just recently been elected president of the association, and the committees for the forthcoming administration have not been organized. The chairman of the committee which studies proposed legislation and makes recommendations to the Congress is out of the city for 2 weeks. I do not find from a study of the reports of that committee, that House Joint Resolution 527 or House Joint Resolution 528 was ever studied. It seems improbable in the short time now remaining that we will be able to assign representatives of the association to study these proposed measures and give helpful testimony in regard to them. However, I shall attempt to study the resolutions and discuss them with such members of the association as are available, and if it appears that our association can be of any assistance, we shall arrange to have a representative present.

Very sincerely yours,

CHARLES B. MURRAY.

NEW YORK COUNTY LAWYERS ASSOCIATION,
New York, N. Y., June 23, 1954.

Hon. LOUIS E. GRAHAM,
Chairman, Committee on Judiciary,
House of Representatives, Washington, D. C.

DEAR SIR: Thank you for your invitation of the 21st instant to send a spokesman to the hearing on June 30 on House Joint Resolutions 527 and 528 now pending before your subcommittee. This matter has been considered by our committee on civil rights and is at present before the board which will not meet until the fall.

Sincerely yours,

THOMAS KEOGH, *Secretary.*

AMERICAN BAR ASSOCIATION,
Chicago 10, Ill., June 24, 1954.

Hon. LOUIS E. GRAHAM,
Chairman, Subcommittee of the Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: President Jameson asks me to acknowledge with thanks your letter of June 21 containing copies of House Joint Resolution 527 and House Joint Resolution 528. Your letter was brought to Mr. Jameson's attention as he passed through Chicago yesterday in the course of a speaking tour.

The bills are being referred to Hon. Herbert R. O'Conor, Mathieson Building, Baltimore, Md., chairman of the association's committee on Communist tactics, strategy, and objectives for consideration of those matters which fall within the jurisdiction of that committee.

We greatly appreciate your transmitting these bills and the invitation to be heard on these matters.

Sincerely yours,

RUTH WHITE.

STATEMENT OF HON. MICHAEL A. MUSMANNO, JUSTICE, STATE OF PENNSYLVANIA SUPREME COURT

Mr. GRAHAM. We will now hear you, Justice Musmanno.

Before proceeding, I want to tell you again how much we appreciate your coming before us and the very valuable help you have given us.

I might state to the committee that when I was United States attorney in Pittsburgh, and even prior to that time, I became acquainted with Justice Musmanno. He has made a lifelong study of this subject and, in my humble judgment, he is probably one of the best informed men on this subject. He has devoted his whole life

to it. He has served abroad and was in charge of the courts at Nuremberg.

No man comes before us better qualified, better equipped than he, and as a consequence we are only too glad to have him available and we do appreciate the work he has done.

Justice MUSMANNO. Thank you, Mr. Chairman.

Miss THOMPSON. Mr. Chairman, I might say I have not known Justice Musmanno as long as you have, but what I know about him is all good.

Also, I might say I interviewed the attorneys that took part in the Nuremberg trials when I was over in Frankfurt. That was in 1945.

Justice MUSMANNO. Thank you.

Mr. GRAHAM. All right, Mr. Justice, if you will proceed, we will be glad to hear you.

Justice MUSMANNO. Mr. Chairman, at our last session, when I had the great privilege of appearing before you, several members of the committee put questions with regard to constitutionality of the Dies bill, H. R. 8912.

I have prepared a brief on that subject which I would be happy to present to the committee and to have included in the record.

Mr. GRAHAM. We will be only too glad to receive it. If it has not already been placed in the record, we will do so at this time.

(The material referred to is as follows:)

REPLY BY PENNSYLVANIA SUPREME COURT JUSTICE MICHAEL A. MUSMANNO TO THE STATEMENT MADE BY ATTORNEY GENERAL HERBERT BROWNELL, JR., ON APRIL 12, 1954, IN WHICH HE OPPOSED THE OUTLAWING OF THE COMMUNIST PARTY

On April 12, 1954, the Attorney General of the United States, the Honorable Herbert Brownell, Jr., appeared before your distinguished committee to voice his objections to proposed legislation providing for outlawing the Communist Party in the United States. With respect and deference to Mr. Brownell's high office and with appreciation for the sincerity of his intention to solve the problems presented by the Communist menace, I feel constrained to point out the fallacies in his argument of April 12 wherein he assumed that the statutes at present on the books (with some suggested improvements) adequately meet the Red threat to our national security.

The views of the Attorney General are naturally very important and are entitled to and do receive the profound consideration of Congress, as well as the people of the United States. However, insofar as recommendations for legislation is concerned, his arguments must be weighed in the same scales of logic, reason, and recognized law precedents as the scales which receive the arguments of the most obscure citizen in the Nation. As against the great prestige of his office which might of itself seem to supply the deficiencies in logic, law, and fact appearing in his statement of April 12, I have decided to reply to his presentation point by point and, where necessary, paragraph by paragraph.

Mr. Brownell states at the outset that he rests his case on the Internal Security Act of 1950, the Smith Act, and the immigration and naturalization laws, all of which, of course, have certain excellent features. The trouble is that in the present state of world and national affairs they are not sufficiently supported by a firm national policy which affirms and declares that the Communist Party is definitively an illegal organization. The Attorney General says that the registration of Communist organizations under the Internal Security Act "will give us the means we seek to protect ourselves," but he does not say how it gives us those means and what are those means. In point of fact, governmental registration does a great deal of harm because it places the imprimatur of the United States Government on the party and all its subsidiary organizations. Registration of Communists will not lessen the malevolence of Communists nor decrease the intensity of their traitorous nature in planning for world revolution. Registering a firearm does not guarantee that it will not be used in a criminal or illegal undertaking. The registered gun can still shoot and can still be used to

kill innocent people. National Commander in Chief Wayne Richards, of the Veterans of Foreign Wars, summed up this phase of the case rather well when he appeared before your committee on June 2. He said that as the matter now stands:

"We lend a certain aura of respectability, a certain color of acceptability, to a philosophy and course of violent conduct [that] we totally and universally denounce.

"To us this is an absurd contradiction, for it is a partial tolerance of something we totally reject. We must not compromise with principle."

There might have been some attainable benefits through the registration of Communists were it not for section 4 (f) of the Internal Security Act which declares, as Mr. Brownell reminded you on April 12, "that the holding of office or membership in any Communist organization shall not constitute in itself a violation of that act or any other criminal statute." It is amazing to me how Mr. Brownell can point to this feeble reed in the Internal Security Act and call it an oak. Of what use is it to register the member of a criminal organization when the admission of his criminality serves as iron-plated immunity from prosecution? Mr. Brownell accentuates this immunity by adding that the "registration cannot be received in evidence in any criminal prosecution against the person registered." He thus emphasizes the utter worthlessness of the registration insofar as protecting the country is concerned. Although we know that the Communist Party in this country has but one object and that is the destruction of the Government of the United States, we cannot, under the Internal Security Act, use in any way the confession of a Communist that he is engaged in that very destructive process. It is simply phenomenal what happens to the machinery of thought when one insists on so self-destructive a proposition as that.

It was never intended that the fifth amendment was to be consciously used to bolster the case of the criminal. Mr. Brownell points out that in the absence of such a provision (4f) the registration requirement "might well be held to be a requirement that the person registering thereby give incriminating evidence against himself." If by registering the Communist we offer him the weapon with which he can hold the prosecution at bay, are we not better off by not requiring him to register? By compelling the Communist to register, you deprive the Government of the right to show that he is a Communist. How can such a proposition hold up in the light of logic and the principles of self-preservation? Mr. Brownell has to concede that every member of the Communist Party is an enemy of the United States. By causing him to register we make it harder to convict him. Can anything be more foolish?

Mr. Brownell says "that the enactment of legislation making membership in the Communist Party per se a crime would be in direct conflict with these provisions of the Internal Security Act."

In his argument of April 12, Mr. Brownell does not address himself to any particular bill now before this committee, but generally refers to all legislation aimed at outlawing the Communist Party. As I have previously indicated, many of the bills at present before this committee are, in my respectful opinion, faulty, so that in replying to the Attorney General I naturally do not defend any of those indicated bills. As I have already stated, I believe that H. R. 8912, introduced by the Honorable Martin Dies, of Texas, answers all constitutional requirements and will definitively and conclusively put the Communist Party of the United States out of business, a consummation devoutly to be wished by all liberty-loving Americans. Thus, in answer to Mr. Brownell's statement that legislation outlawing the Communist Party would be in direct conflict with the Internal Security Act, I will say that the Dies bill, H. R. 8912, would supplant the registration and other features of the Internal Security Act. By operation of the Dies bill, a Communist becomes an outlaw in the same sense that an unapprehended burglar, robber, or murderer becomes an outlaw. Naturally, in those circumstances, it cannot be expected that he will register with the law. With the enactment into law of the Dies bill, the involved, expensive, slow-moving registration machinery in the Internal Security Act would become unnecessary and could be dismantled at once.

The Attorney General states that "if membership alone is made criminal, to require a member to declare his membership is to require him to give self-incriminating evidence." But, as I have just stated, the Communist, under the Dies bill, is not required to declare his membership. His membership,

when established, becomes proof of his crime and he cannot plead the immunity of section 4f of the Internal Security Act, as he can at the present time.

Mr. Brownell adds that making membership in the Communist Party a crime per se would nullify "all of the carefully drawn provisions of the Internal Security Act." But what is wrong with that? If the proposed legislation is superior to the present legislation, why retain the present legislation? To lament that all the preparations in the Internal Security Act will not have a chance to operate is like insisting that we should not use a bulldozer to clean up the debris in a given area because the shovel-wielders have already planned on how to remove the tin cans and stones. It is like saying that we should not use a hose on the garden because we have made arrangements to carry the water in buckets. Or, to use a more drastic illustration and one in keeping with the seriousness of the situation of today, it is like saying that we should not use the atom bomb because conventional artillery can methodically knock down one by one the houses in a targeted town. Why use the Internal Security Act with all its laborious, snail-moving registrations, when the machinery of H. R. 8912 can with one fell swoop do everything, and far more than that expected of the Internal Security Act?

Mr. Brownell says that outlawing the Communist Party will do nothing "in lieu of the act it vitiates, for failure to register under the Internal Security Act carries with it stiff penalties." In this statement, the Attorney General equates failure to register under the Internal Security Act with making membership in the Communist Party a crime. But that is not the pertinent comparison. The comparison is to be made between the Communist who registers under the Internal Security Act and the Communist who becomes a criminal simply by means of the passage of H. R. 8912. Under the registration required by the Internal Security Act the Communist has nothing to lose—and we have nothing to gain. We already know he is a Communist. The FBI has the list of 25,000 members of the Communist Party in the United States. Requiring voluntary registration of the members does not add to the knowledge of the FBI in this respect. However, in spite of the fact that the FBI has the list of the 25,000 members, the Communist menace is still a reality. In fact, J. Edgar Hoover has declared that that the Communist Party (especially through membership in expelled labor unions) poses a "major and dangerous threat to our national security."

Under H. R. 8912, the situation completely changes. With the passage of that bill, every Communist, without any registering, immediately becomes liable to prosecution, conviction, and imprisonment. That is the difference between the provisions of the Internal Security Act and the provisions of H. R. 8912.

I do not question at all, nor appreciate any less than Mr. Brownell, the beneficial results attained through the working of the Smith Act. I only say that with the Smith Act we are using a rifle when a machine gun is needed; we are using artillery when an atom bomb is required. The threat to the American people is here; it cannot be minimized by any fine-spun theories; it cannot be cloaked by argument. When the first team of the Communist Party was prosecuted and convicted under the Smith Act, the second team went into operation. We have now convicted the second team, and the third team is in the field. The Communist Party still has headquarters, it still publishes the Daily Worker, it still carries on as a legal organization. There is something utterly grotesque about proceeding against a known enemy inch by inch when one blow would finish it off completely. H. R. 8912 would be the atomic obliteration of the Communist Party of the United States.

The Attorney General says that under the Smith Act "we hope to cripple the domestic leadership of the Communist Party and thereby destroy a large part of its effectiveness." It is not enough to destroy "a large part" of its effectiveness. It must be destroyed completely; it must be annihilated as the Japanese Navy was annihilated, as Hitler's armies were destroyed. To say that we must only cripple the enemy would be like saying in an American offensive against an enemy army of 1 million men that it would be enough to pick off the generals only. The Army would still remain an army and would still be effective because colonels would become generals, majors become colonels and captains become majors while the first string generals were being picked off.

The Attorney General assumes that section 2 (a) (3) of the Smith Act suffices to meet the needs of the country for security. But it is not enough. Under the Smith Act, the Government is required to prove in detail that the objective of the Communist Party is to overthrow the Government of the United States by force and violence. Months of trial are thus devoted to prove what everyone knows to be fact. The first Smith Act prosecution in the New York case cost

the Government over $1 million and it took 9 months to try. In all the Smith Act prosecutions throughout the United States, months are devoted to proving what is meant by the Communist Manifesto, Lenin's State and Revolution, Stalin's Problems of Leninism, and score of other books even though Congress has already stated that the Communist Party of the United States is part of the international Communist conspiracy and has but one purpose, namely, the overthrow of our Government by force and violence.

Under the Smith Act it must be proved that the defendant personally advocated the necessity of overthrowing our Government by force and violence. Under the Dies bill it is only necessary to show that he is a member of the conspiracy to overthrow our Government, and that participation in the conspiracy is demonstrated by proving that he is a member of the Communist Party.

It is not true, as the Attorney General maintains, that the legislation outlawing the Communist Party would be surplusage. H. R. 8912 would take the place of the Smith Act, insofar as it refers to the Communist conspiracy and drastically reduces the time of a Communist trial. Membership in the Communist Party would be proved like any other fact, and once that membership was established the crime would be complete because under the Dies bill, Congress declares the Communist Party to be a criminal organization.

The Attorney General says that the immigration and nationalization laws are "of obvious importance." We do not deny this. H. R. 8912 would not in any way interfere with those laws. Declaring Communists to be criminals would strengthen rather than weaken the immigration and naturalization laws, because this would simplify the matter of stopping the entry of Communists into the United States and of deporting those already here.

The Attorney General says that "those who are sufficiently close to the conspiracy to have firsthand knowledge of it are rarely willing witnesses," but frequently they are "directly questioned as to their knowledge. He states that enactment of a law making Communist Party membership criminal per se "might prove a basis for applying the privilege against self-incrimination in cases where it does not now apply, and thus further complicate prosecutions under these laws." This statement by Mr. Brownell is entirely invalid. A person is or is not a Communist. Under H. R. 8912, if he is a Communist, he will invoke the fifth amendment. Under present laws, if he is a Communist, he will still invoke the fifth amendment. Where is the difference? Naturally, if he is not a Communist (and the question put to him involves the Communist Party) he has no right to use the fifth amendment under existing laws or under the proposed H. R. 8912, and therefore can be compelled to answer.

Mr. Brownell complains that under legislation outlawing the Communist Party, the Communist Party would be declared illegal by legislative finding but that under the Smith Act the court must determine whether the person involved is engaged in illegal activities. It is because there is no necessity for long, extended trials to prove what is already an established fact that we need legislation like that embodied in H. R. 8912. The passage of this bill would not foreclose court review, as Mr. Brownell suggests. This legislation would simply mean that it forecloses the necessity of spending 5 months to prove what can be proved in an hour.

Mr. Brownell fears that declaring Communist Party membership a crime would be a "legislative fiat." But the passage of such a law would not be any more a fiat than the passage of any other law. The enactment of any criminal statute is in the nature of a fiat; it is bound to work a change in the perspective of every citizen because it makes criminal what the moment before the enactment of the law was entirely legal. The only question Congress needs to be concerned with is whether the proposed legislation comes within the jurisdiction conferred upon it by the Constitution of the United States as interpreted by the Supreme Court of the United States. And I do not see how anyone can question that the Supreme Court conclusively settled that precise question in the monumental case of *Dennis* v. *United States* (341 U. S. 494, 501), where the late Chief Justice Vinson said:

"We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. *No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence.*" [Emphasis supplied.]

What Mr. Brownell overlooks in his entire argument is that membership in the Communist Party is membership in a criminal conspiracy, to which, of course, no one has the legal right to belong. Mr. Justice Jackson, in his con-

curring opinion in the same Dennis case, made the point very clear when he said: "The Constitution does not make conspiracy a civil right." Further that "No reason appears for applying it (the law of criminal conspiracy) only to concerted action claimed to disturb interstate commerce and withholding it from those claimed to undermine our whole Government" (p. 572).

In the *Communications Assn.* v. *Douds* case (339 U. S. 382, 433), Justice Jackson said:

"There is certainly sufficient evidence that all members owe allegiance to every detail of the Communist Party program and have assumed a duty actively to help execute it, so that *Congress could, on familiar conspiracy principles, charge each member with responsibility for the goals and means of the party.* Such then is the background which Congress could reasonably find as a basis for exerting its constitutional powers, and which the judiciary cannot disregard in testing them." [Emphasis supplied.]

Mr. Brownell complains that outlawing the Communist Party would mean that "membership in the Communist Party per se is a violation of the statute even without any showing of personal knowledge of its aims or purposes." To say that anyone could be a member of the Communist Party and not know its aims or purposes is to say that one could join a gang of kidnapers and not know that the object of kidnapers is to abduct victims and hold them for ransom, or to join a gang of counterfeiters and not know that the purpose of the organization is to make and circulate false money. Considering the universal dissemination of news today which, through newspapers, radio, and television, enters into every home like the balmy air of summer, I doubt that there is anyone with the intelligence of a 10-year-old who can honestly say that he does not know the purpose of the Communist Party. However, so far as H. R. 8912 is concerned, Mr. Brownell's observation in this regard is purely academic because section 3 specifically states that the penalties provided in this bill apply only to those who are members of the Communist Party, "knowing the revolutionary object or purpose thereof." The case of *Wieman, et al* v. *Updegraff et al.* (344 U. S. 183), cited by Mr. Brownell in this portion of his statement has no possible application to the situation outlined in H. R. 8912. Mr. Brownell's reference to the Dennis case in this connection strengthens rather than weakens the constitutionality, the wisdom, and the necessity for the enactment of H. R. 8912.

I repeat that membership in the Communist Party may be made a crime of itself because it means membership in a criminal conspiracy. In this connection I should like to quote again from the Dennis case, where Justice Jackson said:

"The basic rationale of the law of conspiracy is that a conspiracy may be an evil in itself, independently of any other evil it seeks to accomplish. Thus, we recently held in *Pinkerton* v. *U. S.* (328 U. S. 640, 643–644), 'It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinctive offenses. The power of Congress to separate the two and to affix to each a different penalty is well established * * *. And the plea of double jeopardy is no defense to a conviction for both offenses' " (341 U. S. 494, 573).

Further: "The reasons underlying the doctrine that *conspiracy may be a substantive evil in itself*, apart from any evil it may threaten, attempt, or accomplish, are *peculiarly appropriate to conspiratorial communism.*" [Emphasis supplied.] (P. 573.)

It may be well also to look at the decision of the Supreme Court of the United States in the case of *Adler* v. *Board of Education* (342 U. S. 485), where the Court, through Justice Minton, said:

"Membership in a listed organization found to be within the statute and known by the member to be within the statute is a legislative finding that the member by his membership supports the thing the organization stands for, namely, the overthrow of Government by unlawful means. We cannot say that such a finding is contrary to fact or that 'generality of experience' points to a different conclusion" (pp. 494–495).

Mr. Brownell says that "it would undoubtedly be argued that the first amendment would be affected by such a law." There is no doubt whatsoever that Communists will so argue. That is the argument they use in every case where the United States Government is seeking to protect this Nation from their traitorous activities. This argument was specifically advanced in the Douds case, supra, and the Supreme Court specifically rejected it in the following language, Chief Justice Vinson speaking:

"Although the first amendment provides that Congress shall make no law abridging the freedom of speech, press, or assembly, it has long been established that those freedoms themselves *are dependent upon the power of constitutional government to survive.* If it is to survive it must have power to protect itself against unlawful conduct and, under some circumstances, against incitement to commit unlawful acts. Freedom of speech thus does not comprehend the right to speak on any subject at any time." [Emphasis supplied.] (P. 394.)

Mr. Brownell states that "the sum of the constitutional doubts as to such proposals suggests at least that several years might be required before final ruling could be anticipated." I think that Mr. Brownell is unduly pessimistic in this respect but even if several years were to pass, it is far better in the long run to have proper legislation than to hobble along with improper legislation. It might be noted in this connection that the great delay in a decision on the Internal Security Act is due to the fact that after the Subversive Activities Control Board was appointed, at least 15 months was consumed in the taking of testimony by that Board and further time elapsed on top of that before the act got into the courts for interpretation. A decision on H. R. 8912 would be comparatively rapid because any trial under its provisions would be short and, given the importance of the litigation, the appeal would undoubtedly be accelerated. At any rate, all present legislation on the subject would remain in effect until the final decision of the Supreme Court on the proposed legislation.

Mr. Brownell then offers a strange objection for an Attorney General charged with enforcing the law when he says that to prosecute 25,000 members of the Communist Party would be a "tremendous task." When has duly constituted government hesitated to prosecute crime because of the burdens attendant upon such prosecution? To object to taking up burdens involving the very security of our Nation is not the American way of approaching any problem. With that kind of reasoning the Federal forces should not have sought to preserve the Union in 1861 because of the numerousness of Confederate spies. Suppose it is a "tremendous task." It is no more tremendous than fighting a war; it is no more tremendous than fighting murderers, counterfeiters, and kidnapers. Furthermore, the job is not so tremendous as the Attorney General apprehends. Not having to prove the purpose and objective of the Communist Party—which is what makes the Smith trials so long—trials under the new legislation would be comparatively short. Moreover, it will not be 25,000 who will be prosecuted. Immediately after the enactment of H. R. 8912, nothing can be more certain than the fact that thousands of Communists will leave the party like rats deserting a sinking ship.

When Mr. Brownell speaks of difficulty of proof, he in effect speaks the language of defeatism. The proof of the criminality of Communists has never been lacking. It has been the reluctance on the part of officialdom to acknowledge the grim reality of what the Communist Party means that has done so much damage to the United States.

One who is averse to carrying out any particular policy can conjure up all kinds of captious objections. Thus, Mr. Brownell complains that party membership could in many cases only be "established through the oral testimony of the confidential informants, people whose value for such purposes would be thereafter completely destroyed." But before their value would be supposedly destroyed they would have supplied information for convicting many Communists. If the FBI now knows of 25,000 members of the Communist Party, the present informants can establish the membership of a large portion of that 25,000, or practically all of those who remain in the party after the enactment of H. R. 8912. Furthermore, no big offensive ceases because there may be casualties. If these informants become valueless there will be other informants to take up the fight. According to Mr. Brownell's arguments, no informants should be used even in prosecuting under the Smith Act because their value would thereafter be completely destroyed. This is not argument, it is simply obstructionism. The United States does not lack in personnel willing to take up any task involving the security of our country and the preservation of its institutions.

Nor is it correct, as Mr. Brownell says, that under legislation outlawing the Communist Party the same evidence would be required as is now used in prosecutions under the Smith Act. As already stated a number of times, under the Dies bill the objective and purposes of the Communist Party would not need to be proved in court.

As a final criticism, the Attorney General's statement says that legislation outlawing the Communist Party "would force the Communist movement under-

ground, cause it to close its headquarters, terminate its publications," and this "would at the same time and to the same extent increase the already difficult investigatory job of the FBI." This complaint would suggest that the Communist Party is maintaining its headquarters and publishing its Daily Worker as a convenience to the FBI. The Communist headquarters and publications continue to exist because these facilities are of vast aid to the Communists in the carrying out of their objectives, which is to overthrow the Government of the United States by force and violence. The Daily Worker informs all the party faithfuls of the party line as it comes from Moscow. It is not a newspaper, it is a battle directive. The Communist headquarters supply meeting places for the conspirators, who, with telephone, telegraph, and courier services at their command, despite the surveillance of the FBI, still carry out the work of the revolution. If the maintenance of the headquarters and the publication of Communist newspapers really helped the FBI and hurt the Communist Party, it needs no Einstein to reason that the Communists would give up the headquarters and the newspapers in a hurry. To argue that the Communist Party should be allowed to maintain its headquarters so that we may know what it is doing is like saying that arsonists should be required to keep their gasoline in full view so that we can tell just how much incendiary material they have on hand. The best way to meet that criminal threat would be not to tolerate the arsonists but to destroy their incendiary deposits and arrest the arsonists.

Although the argument that outlawing the Communist Party will drive the Communists underground is an argument that has been bleached white in the sunlight of reason; it still raises its pallid head to speak its anemic lines. It assumes that Communists plan their revolutions in the Capitol Esplanade of Washington, in the Rockefeller Plaza in New York, and on the lake front in Chicago. The Communist Party has always been underground in the sense that it has always been spying on us, plotting against us, and undermining the institutions which make us free. Vladimir Lenin, founder and leader of the Bolshevik Revolutionary Party in Russia, prepared decades ago detailed plans for the underground activities of the Communist Party. William Z. Foster, national chairman of the Communist Party of the United States, is the architect who has designed the detailed blueprint of the Communist underground structure in the United States.

I hold here in my hand the latest brief filed by the United States Government in the case of *U. S.* v. *Elizabeth Gurley Flynn* in the United States Court of Appeals, Second Circuit. This brief was undoubtedly prepared under the supervision of the Department of Justice. Nine pages of this brief are devoted to a detailed discussion of the Communist underground, not as a possibility but as an actuality of today. J. Edgar Hoover, Director of the FBI, has spoken at length of the Communist underground of today. To speak of the Communist underground as a hypothetical contingency of the future is simply to ignore the ground under one's feet.

It has always been said of the Communist Party, by those who know, that its party structure is like an iceberg—one-eighth above the surface and seven-eighths beneath the surface. And I may add that the above-surface portion may be compared to a periscope through which the torpedoing plotters below observe the target and plan how to destroy it. To oppose outlawing the Communist Party is to oppose destroying the periscope.

Under the heading of "Loopholes in Our Laws," Mr. Brownell recommends that the Internal Security Act be broadened to require the registration of labor unions and businesses which are "under the domination of Communists and are in a position to damage our national security." Specifically he has proposed legislation entitled the "Communist-Infiltrated Organizations Act." This measure would require the Subversives Control Board to conduct hearings to determine if certain labor organizations have been infiltrated by Communists. If it found such infiltration, employers would not be required to deal with the union for collective-bargaining purposes, and employers would not be considered as engaging in unfair-labor practices if they refused to hire or to dismiss employees who attempted to compel recognition of the union for collective-bargaining purposes. In addition to the possibility that such an act, unless enforced under regulations carefully drawn, might be misused to harm legitimate members of legitimate labor unions, there is another criticism, well articulated in an editorial by the New York Times on May 13, 1954, as follows:

"Communist-controlled unions may still continue to exist, because while employers are not required by law to bargain with them they may do so. Employers who are economically strong will certainly refuse to bargain and will successfully

fend off strikes to compel recognition. But small economically weak employers may be unable to withstand such concerted action. Their capitulation would, obviously, not be a matter of choice but of necessity. These small, handicapped employers would, in a sense, bear the brunt of enforcing the statute."

Under H. R. 8912, Communists controlling any labor union would be arrested, convicted, and sent to prison for 10 years. If those who took the places of the convicted Communists themselves became Communists, they would be prosecuted and sent to prison for 10 years. I am certain that after 2 or 3 convictions of this character the first Communist that stepped into that union would be driven out by the union membership without intervention by the Government. It is certainly desirable that a procedure be established whereby unions and businesses tainted with Communists be officially investigated so that the offending persons may be identified and prosecuted, but we must never lose sight of the fact that the vital thing is to prosecute those engaged in plotting against the security of the Nation.

The Attorney General has presented another bill which is called the Defense Protection Act of 1954. This measure would bar subversives from privately owned facilities engaged in supplying power or basic materials to defense contractors. Here again great care needs to be exercised so that legitimate and loyal enterprises may not be harassed and damaged. Under a broad interpretation of this measure, it could be argued, as was pointed out in the New York Times of May 15, 1954, that "a newspaper, or a radio station, or a motion picture could be said under the defense protection bill to be 'in a position to affect security.'" As I have indicated, while investigatory powers must be lodged in a suitable investigating body the vital thing is to track down, ferret out and prosecute Communists. Communism is not a vague, invisible force. It is a program of conspiracy against the security of the Nation. The conspirators must be isolated and immured.

I applaud the Attorney General's determination to strengthen the laws against sabotage, espionage, harboring of fugitives and perjury, but I must point out that the passage of legislation outlawing the Communist Party would in many instances make legislation suggested by the Attorney General unnecessary. Again we would have the situation of pitting an artillery shell against the atom bomb.

Under the heading "Immunity Legislation," Mr. Brownell says:

"The bulk of the Communist adherents is now under orders to place themselves in readiness in positions where, at the propitious moment, they will be available to carry out the dirty business of sabotage, espionage, and subversion, to disrupt internally our citadel of defense."

But how would the Attorney General meet that situation? By registering the saboteurs, spies, and subversives? Mr. Brownell adds: "Therefore, it is essential that we secure the means of informing ourselves in advance of where these conspirators will seek to act, and to forestall them before their damage is irreparably done." I know of no better way of forestalling the threatened irreparable damage of these conspirators than by taking them into custody as the criminals they are and putting them behind iron bars and stone walls.

What we are seeking to do is to stamp out the Communist criminal conspiracy to destroy our Government, and the most direct way to achieve that end is to declare all Communist organizations illegal and to imprison all Communists. With all that has been said against outlawing the Communist Party, no one has yet come up with a rational argument as to why we should not completely isolate the enemy that is trying to destroy us. We fought the Communist in Korea to keep him from hurting us here. This enemy is so powerful, his evil influence so far-reaching that it has even been recommended we should fight him in the jungles of Indochina so that the tentacles of his conspiratorial malevolence may not crush out our freedoms here in America. And yet here in the United States, where we actually see him and know him for what he is, we decide to fight him by writing his name in a registration book. If all this were written up as a story in Ruritania, we would smile at its fictional absurdity, but it is happening here in the most enlightened republic of history.

Incidentally, what will the historians of the future say of these strange happenings?

The rationale which sees virtue in the noncriminal registration of Communists can only be supported in metaphysics; certainly not in logic or governmental science. If, according to the Attorney General, the Communist Party is a perfectly legal organization and not to be molested, then why should its members be required to register, apart from registrations which apply to all citizens equally?

There are literally hundreds of legislative measures, some on the statute books, some in the legislative machinery, and some to be proposed, as to what Communists may and may not do. In this forest of legislative propositions there are some that deny Communists certain employment, certain residences, certain transportation, certain contractual rights; they are to be limited and restricted in printing, mailing, and writing privileges, they may not enter certain areas, they may not enter into certain associations, etc., etc. But if a Communist is an American citizen and the Attorney General of the United States says there is nothing wrong about his being a member of the Communist Party, what right does his Department have to deny him employment? If, according to the Department of Justice, the Communist is not a criminal, then by what right may he be restricted or silenced or denied the right to work where he pleases? Can anything be more inconsistent, more absurd, more un-American than telling a man he has the right to join a certain organization, but if he does he may not choose his calling or trade, he may not select his residence, he may not name his associates, etc., etc.? We do not have under our Constitution any such status as partial citizenship. A person cannot be a citizen for certain matters and a noncitizen for other matters. The legislation endorsed and recommended by Mr. Brownell makes a Communist a constitutional hippogriff, for which there is no provision in the American scheme of government.

There is something quite unsatisfactory and even humiliating about the current approach to the Communist menace in America. It reveals an irresolution, a spirit of timidity and appeasement that is not in consonance with the American character that confronts problems directly and face to face. Compromising with an evil can only augment and compound the inevitable disaster consequent upon such unvalorous conciliation. The compromise with the pre-Civil War slavery question had eventually to be wiped away in blood. The compromise at Munich became fuel for the most catastrophic conflagration in history.

There is no compromise with communism. It cannot be approached diagonally. There is only one thing that Communists recognize and that is a firm position reinforced with power to sustain it. There are not enough leaves in the forests to match in quantity the number of times it has been asserted that Communists are determined to destroy the American way of life. Why, then, conciliate with the evildoers?

In view of all these things, Mr. Brownell's recommendations can only be taken with a great deal of reserve. In fact, I think that we can almost conclude that Mr. Brownell does not mean what he said here or that he has not weighed the significance of what he recommended before your committee. In substantiation of this observation it is only necessary to look at the speech he delivered on April 9, only 3 days before his appearance here. On April 9, speaking to the entire United States over television and radio networks he said:

"The threat of communism is a very real one. Communists are scheming, practical, and devious men and women dedicated to the destruction of our Government and our way of life."

Listen to that sentence: "Communists are scheming, practical, and devious men and women dedicated to the destruction of our Government and our way of life." No modification, no limitation: They are dedicated not to merely disturbing but to destroying our Government and our way of life. Then, only 3 days later he says that Communists should be given a legal status, should be allowed to have headquarters and every facility that our great country affords in the way of telegraph, telephone, courier, printing, and messenger services—to do what? To carry on for the destruction of our Government and our way of life. Does it make sense?

Which of the two propositions are we to accept? The one presented by Mr. Brownell on April 9 or April 12? I prefer to believe that he was speaking from his heart when he addressed the Nation on April 9. Speaking directly to the American people via television he was speaking as an American patriot. Here he was speaking as an administrator who was reluctant to see the dismantling of an elaborate machine even though some deep reflection and deliberation would easily convince him that all this machinery is not only unnecessary but actually ruinous of the cause he is defending.

On April 9 he referred to the 25,000 Communists in the United States as potential foreign agents. Yet, according to his statement before this committee, he would legalize them. Could anything be more inconsistent?

There are those who speak of 25,000 Communists in the United States as a small number, but 25,000 Communists means 25,000 foreign agents, 25,000 spies.

Twenty-five thousand spies in the United States means 1 for every 6,000 people. We have only 1 FBI agent for every 26,000 Americans. Furthermore, it must he noted that each one of these 25,000 spies must have at least 5 people who, through relationship, persuasion, friendship, or sheer perversion, will do the spy's bidding, so that, instead of 25,000 Soviet agents, you have a potential 125,000 saboteurs. One Communist in the wrong place is a menace to national security. It takes only 1 man to blow up a bridge, only 1 auger to sink a ship, only 1 monkey wrench to wreck a machine, only 1 bucket of sand to ruin a dynamo, only 1 Alger Hiss in striped pants to betray America into the hands of her enemies.

I believe that Mr. Brownell's statement before this committee, which statement, of course, was given news coverage throughout the United States, has done and will continue to do the country a great deal of damage because it will give encouragement to the Communist Party and will bring them recruits. A Mrs. Margaret A. Flanagan of East Santa Cruz, Calif., wrote me, shortly after 1 appeared here saying that "outlawing the party in California would have a most salutary effect because 'they' love to tell you that the party is legal in California—therefore their activities are legal."

Mr. Brownell's self-contradictory position on this subject of outlawing the Communist Party is reflected in the statement of William J. Jameson, of Billings, Mont., president of the American Bar Association, that:

"We must recognize and protect the constitutional rights of all, including Communists, but at the same time we must not he blinded to the fact that if the Communist philosophy should prevail, these constitutional rights would be forever lost."

Using Mr. Jameson's thought and paraphrasing the language we could say: "The Communist is entitled to use firearms but if he uses that firearm against us of course he may kill us." The fundamental error in Mr. Jameson's proposition is that he starts off with a wrong premise. He says that we must protect the constitutional rights of the Communists. But the constitutional rights of a Communist do not entitle him to betray the Government which assures him those constitutional rights. The constitutional rights of a man who kills his neighbor in cold blood is to have a trial, in accordance with the guaranties in the Constitution. It would be absurd to say that the Constitution gives this killer the right to remain at large and continue shooting. The member of a gang of robbers is entitled to constitutional rights. Those rights include trial by jury, defense counsel, witnesses in his behalf, and opportunity to confront accusing witness. The Constitution does not give him the right to have headquarters, publish a newspaper, and continue to rob.

Every person in the United States has rights under our Constitution but the Constitution does not give anyone the right to he a Communist any more than it gives him the right to he a murderer.

I do not know how members of this distinguished committee may react to this entire incredulous situation, but I am frank to say that, in my opinion, there is something almost immoral about living in the same constitutional house with an organization that is wedded to a foreign government, devoted to a foreign ideology, and loyal to a foreign conspiracy, whose object and plan it is to murder us in our beds, and take possession of our home for the purpose of turning it over to that foreign government, that foreign ideology, and that foreign conspiracy.

We are using an appalling percentage of all our Government services on this one item of protecting the supposed rights of Communists. Bureaus, boards, committees, bill drafters, research men are devoting nights and days to preparing legislation, plans, reviews, super-reviews on the subjects of special treatment, special hearings, special consideration, delays, privileges, and prerogatives. And yet, what is the essential question of Communists in the United States? It is simply a question for the police and for the courts.

If all other types of criminality in the country were to get the attention accorded to Communists, we would have to have a special branch in the Department of Justice to protect the constitutional rights of kidnapers, a special bureau for the guarding of the rights of counterfeiters, countless investigating committees to see to it that all bandits are assured of fifth amendment privileges. I repeat, it is a matter for wonderment in the never-never land of fancy.

A few months ago on a visit to New York I happened to meet up with a group of young American soldiers who had just returned from Korea. They were touring the town and were, of course, greatly impressed with all the wonders that Manhattan has to offer. But there was one thing which bewildered them. They saw in New York a Communist headquarters. These young men still

bore physical and moral scars from battling Communists in Korea; some of their comrades had suffered horrible atrocities at the hands of Communist captors. The word Communist was a word for them to hate. Yet here back in their own home country they saw the word and the deed in Communist headquarters, in Communist newspapers, and in Communist individuals, and it was all legal. These American soldier boys could not understand it. Neither can I.

If we had refused to recognize Communist Russia in 1933, or had denounced the recognition when it quickly became evident that it was being used only for our own undoing, the tragedy of the Korean war would never have come to pass. If we had outlawed the Communist Party any time between 1929, when it was first formed here, and 1939, Hitler and Stalin might never have precipitated World War II. And I am satisfied that had we arrested every Communist after 1940, Russia would not today have the atom and the hydrogen bomb. Nothing, however, can be more useless than past regrets. At the same time nothing can be more useful than using past mistakes for charting the future. The fact that Russia has the atom bomb and possibly also the hydrogen bomb need not dismay us. It may well be that there will be other inventions, inventions that may neutralize the hydrogen bomb. Certainly the scientific distance to be traveled from the hydrogen bomb to its antidote is not as great as that which had to be traversed in discovering the frightful magic of the hydrogen bomb itself. I cannot believe that science which could with almost supernatural genius create the hydrogen bomb capable of wiping out an island in the sea cannot find the combination of chemical and mechanical ingredients that will destroy the plane carrying the bomb or one which will detect the presence of a hydrogen bomb far enough away to signal planes to intercept it. I believe that that is not only within the realm of possibility but practically within the range of expectancy.

And what is to be done with that secret once it is discovered? Are the Communists to be allowed to steal that also? We have seen how the Alger Hisses, the William Remingtons, the Harry Dexter Whites, the Judith Coplons, the Rosenbergs, the Harry Golds and the other unspeakable traitors stole atom bomb formulas, Government documents, and national security secrets. Are the Communists of today to be allowed to steal the new secrets which American genius under God's guidance may discover? Are we going to permit 25,000 spies to travel everywhere unmolestedly, untrammeledly, wearing the bulletproof vest of the United States Constitution, insulated against arrest by the Bill of Rights and protected from prosecution by registration and legislative immunities?

Mr. Chairman, one great chance is left to us. To allow this gang of potential murderers, potential destroyers of civilization, and potential betrayers of the human race to steal that secret or any more secrets of American security is to commit an unpardonable crime against the founders of our beloved country, a crime against the Americans yet to be born, if indeed—unless there is a direct, purposeful, and conclusive extirpation of the Communist conspiracy—there is to be a future America at all.

Every day some domestic turmoil or international disturbance makes American official position on the Communist Party all the more inconsistent, all the more indefensible, and all the more intolerable. There is not a true American patriot and lover of democracy that does not secretly yearn, if not openly hope, that the Red regime in Guatemala may fall. And there is no doubt that the people of the United States would enthusiastically applaud and cheer any action in Guatemala which would result in outlawing all Communists in Guatemala. We would cheer that courageous action on the Carribbean, but we lack the courage or the will to do it on the Potomac.

We are partly responsible for the sad plight of Guatemala and the melancholy days upon which she has fallen. For years Communist agents have been telling the Latin Americans that it is not true that the United States opposes communism. They point out: Is the Communist Party not legal in the United States? Does it not have headquarters in the large cities? Does it not openly publish newspapers and magazines? Do not its members have access to the galleries of the Capitol? Do representatives of the Red Pravda and Izvestia not have the right to enter all our Government departments? Are Communists not allowed to be candidates for President, Senators and Representatives in Congress? Who knows how many thousands of honest but deluded Mexicans, Cubans and other Pan-Americans have been recruited into the Communist Party because they have been told that it is proper, honorable, desirable and even wise to join the Com-

munist Party. "Look at the United States," they have been urged. "The Communists there are untouchable."

Although, concededly, there is some gringoism in Latin America, it must also be admitted that there has also been a profound respect for the United States. That respect has been not only an acknowledgment of the power and the wealth of the United States, but it has had its basic roots in an appreciation of the truly benevolent spirit that this country has manifested toward all its Pan American neighbors. But that respect is wavering. It can turn into doubt and even disrespect when it is seen that the United States occupies a position which is certainly inconsistent and which seems to be insincere, if not dishonest. The United States asks Guatemala and all other Latin Americas to drive communism from its shores, but here we give the Communist Party the protection and the respectability of a political party. We say we know it is not a political party, we say we are aware it is a criminal conspiracy, but we don't act that way.

Never did the United States wear two faces. The time has come to tear away the mask of a misguided liberalism which, in the name of democracy, gives to Communists the very means and the weapon to destroy democracy, and which, in the name of the Bill of Rights, invites the Communists to destroy the Bill of Rights. The time has come to throw away the distorted philosophy of appeasing the Red python coiled at our very doorstep. The time has come to speak as Americans and act as Americans. The time has come to call the Communists in America really to account.

The passage of H. R. 8912 will do more to clear the atmosphere as to what the United States means and thus immeasurably further the cause of peace than the landing of a million times more arms and ammunition than the Soviets landed at Puerto Barrios.

Justice MUSMANNO. I would like briefly to refer to some of the material in this brief because particularly as late as May 24 of this year the Supreme Court of the United States reaffirmed principles of constitutional law which assure us of the constitutionality of the Dies bill, H. R. 8912, outlawing the Communist Party and providing punishment for membership in the Communist Party.

In this decision, filed on May 24, of *Robert Norbert Galvin, Petitioner*, v. *U. L. Press, Officer in Charge, Immigration and Naturalization Service*, at 407, October term, 1953, the Supreme Court pointed out that under the Immigration and Nationality Act of 1952, where deportation proceedings are brought against—

aliens who are members of or affiliated with the Communist Party of the United States may be deported without any hearing or discussion as to whether the Communist Party does seek to overthrow the Government of the United States.

The Supreme Court said it is enough to deport an alien if it is shown that—

The alien joined the party aware that he was joining an organization known as the Communist Party, which operates as a distinct and active political organization, and that he did so of his own free will.

Mr. Chairman, if under present law we may deport an alien on the showing that he is a member of the Communist Party, why cannot the Congress provide for penal punishment for members of the Communist Party who remain here?

Deportation, perhaps, in many ways is even a more severe punishment than imprisonment.

The Supreme Court of the United States said in the case of *Ng Fung Ho* v. *White*, that to deport a man is to deprive him of all that makes life worth living.

In another case, the Supreme Court said that—

deportation is a drastic measure and at times the equivalent of banishment or exile.

We have had dramatic proof recently of how Communists themselves feel about deportation.

In several instances where convictions were had under the Smith Act, notably in the last trial in New York, the presiding judge offered the convicted defendants freedom from jail if they would agree to be sent to another country. They preferred jail, that is, jail in the United States.

There can be no constitutional doubt that membership in an organization proved to be inimical to the best interests of the State or Nation can be punished in one form or another through legislation.

We have seen how deportation can, ipso facto, follow upon proof of membership in the Communist Party. We know that the Hatch Act prohibits employment by any Government agency of members of organizations advocating overthrow of our constitutional form of government.

We know that the Taft-Hartley Act contains a section designed to exclude Communists from positions of leadership in labor organizations.

The United States Supreme Court, in the famous case of *Adler* v. *Board of Education*, interpreting the Feinberg law of New York, said this:

> Membership in a listed organization found to be within the statute and known by the member to be within the statute is a legislative finding that the member by his membership supports the thing the organization stands for, namely, the overthrow of government by unlawful means. We cannot say that such a finding is contrary to fact or that "generality of experience" points to a different conclusion. Disqualification follows, therefore, as a reasonable presumption from such membership and support.

Mr. Chairman, certainly no one at this late hour of the legislative day will advance the stale argument that the Communist Party is a political party and that its members are merely exercising their political rights under the Constitution.

In the decisive and landmark case of *Communications Association* v. *Douds*, Justice Jackson said in his concurring opinion that:

> Every member of the Communist Party is an agent to execute the Communist program.

What is the program of the Communist Party?

Every department of the United States Government, the judicial, the executive, the legislative, has declared this program to be the overthrowing of the Government of the United States by force and violence.

There is scarcely a member of this distinguished committee that has not participated in the enactment of some legislation based on the established premise that the Communist Party is committed to destroying the present form of the Government of the United States.

The Communist Party is the enemy of the United States.

Can anyone seriously contend that an enemy organization may not be prohibited by Congress from using against the United States "rights, privileges, and immunities attendant upon legal bodies"?

Every member of the Communist Party owes allegiance to the program of the Communist Party.

Justice Jackson says in that same Douds case:

> * * * Congress could, on familiar conspiracy principles, charge each member with responsibility for the goals and means of the party.

I don't know how a member of the Supreme Court could make it clearer that legislation such as that which is embodied within the Dies bill would certainly come within the confines of the United States Constitution.

After the many authoritative expressions by the Supreme Court of the United States, the President of the United States and Congress of the United States, that membership in the Communist Party is membership in an organization committed to the wrecking of our whole system of Government, visiting death, destruction, and misery on the whole American people, it is certainly unthinkable to say that Congress does not have the power to declare that that type of membership is criminal.

As stated by the late Chief Justice Vinson, in the case of *Dennis* v. *United States:*

> We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence.

And now I would like to take up just a few of the things that Mr. Brownell mentioned when he appeared before this distinguished committee. He offered a strange objection for an Attorney General charged with enforcing the law when he said that to prosecute 25,000 members of the Communist Party would be a "tremendous task."

When has duly constituted government hesitated to prosecute crime because of the burden attendant upon such prosecution?

To object to taking up burdens involving the very security of our Nation is not the American way of approaching any problem. But by that kind of reasoning the Federal forces should not have sought to preserve the Union in 1861 because of the numerousness of Confederate spies.

Suppose it is a "tremendous task"? It is no more tremendous than fighting a war, it is no more tremendous than fighting murderers, counterfeiters, and kidnappers.

Furthermore, the job is not so tremendous as the Attorney General comprehends. Not having to prove the purpose and objective of the Communist Party—which is what makes the Smith trials so long—trials under the new legislation would be comparatively short.

Moreover, it will not be 25,000 who will be prosecuted; immediately after the enactment of H. R. 8912, nothing can be more certain than the fact that thousands of Communists will leave the party like rats deserting a sinking ship.

When Mr. Brownell speaks of difficulty of proof, he is in effect speaking the language of defeatism. The proof of the criminality of Communists has never been lacking. It has been the reluctance on the part of officialdom to acknowledge the grim reality of what the Communist Party means that has done so much damage to the United States.

Nor is it correct, as Mr. Brownell says, that under legislation outlawing the Communist Party the same evidence would be required as is now used in prosecutions under the Smith Act.

As already stated a number of times, under the Dies bill the objective and purposes of the Communist Party would not need to be proved in court.

You already have a prima facie case, Mr. Chairman. When the United States attorney opens up the trial he refers to the act, and you have the prima facie case that membership in the Communist Party in itself is a crime, and then you proceed to establish that this individual is a member.

There, of course, you have to have the evidence which is required in proving a case of that character.

As a final criticism, the Attorney General's statement says that legislation outlawing the Communist Party:

> Would force the Communist movement underground, cause it to close its headquarters, terminate its publications,

and this would

> at the same time and to the same extent increase the already difficult investigatory job of the FBI.

Let me repeat that. The Attorney General says that if you outlaw the Communist Party, this would force the Communist movement underground because it would close its headquarters, terminate its publications, and that would make it very difficult for the FBI.

Mr. GRAHAM. Mr. Justice, may I interrupt for a moment?

Justice MUSMANNO. Yes.

Mr. GRAHAM. Here is what comes to my mind: Under the immunity granted through their diplomatic corps and the like, and their ability to bring into this country large quantities of propaganda material, could they not through that medium dispense a great deal of it from their embassies without having active members, like running the Daily Worker and things like that?

Justice MUSMANNON. Mr. Chairman, so long as the Daily Worker remains within the confines of the Russian Embassy it naturally is on an island of immunity, but the first man who carries it out of the embassy then comes under the Dies Act.

When the Attorney General says that we should allow the Communist Party to continue to function because, if you outlawed it, it makes it hard on the FBI, this complaint would suggest that the Communist Party is maintaining its headquarters and publishing the Daily Worker as a convenience to the FBI.

The Communist headquarters and publications continue to exist because these facilities are of vast aid to the Communists in the carrying out of their objectives, which are to overthrow the Government of the United States by force and violence.

The Daily Worker informs all the party faithfuls of the party line as it comes directly from Moscow. It is not a newspaper; it is a battle directive.

The Communist headquarters supply meeting places for the conspirators, who with telephone, telegraph, and courier services at their command, despite the surveillance of the FBI, still carry out the work of the revolution.

If the maintenance of the headquarters and the publication of Communist newspapers really helped the FBI and hurt the Communist Party, it needs no Einstein to reason that the Communists would give up the headquarters and the newspapers in a hurry.

To argue that the Communist Party should be allowed to maintain its headquarters so that we may know what it is doing is like saying that arsonists should be required to keep their gasoline in full view

so that we can tell just how much incendiary material they have on hand.

The best way to meet that criminal threat would be not to tolerate the arsonists, but to destroy their incendiary deposits and arrest the arsonists.

Although the argument that outlawing the Communist Party will drive the Communists underground is an argument that has been blanched white in the sunlight of reason, it still raises its pallid head to speak its anemic lines.

It assumes that Communists plan their revolutions in the Capital Esplanade of Washington, in the Rockefeller Plaza in New York, and on the lake front in Chicago.

The Communist Party has always been underground in the sense that it has always been spying on us, plotting against us, and undermining the institutions which make us free.

Vladimir Lenin, founder and leader of the Bolshevik Revolutionary Party in Russia, prepared decades ago detailed plans for the underground activities of the Communist Party.

William Z. Foster, national chairman of the Communist Party of the United States, is the architect who has designed the detailed blueprint of the Communist underground structure in the United States.

I hold here in my hand the latest brief filed by the United States Government in the case of *United States* v. *Elizabeth Gurley Flynn* in the United States Court of Appeals, Second Circuit.

This brief was undoubtedly prepared under the supervision of the Department of Justice.

And I would like to call to your attention, Mr. Chairman, that 9 pages of this brief, pages 46 to 54, are devoted to a detailed discussion of the Communist underground, not as a possibility, but as an actuality of today.

J. Edgar Hoover, Director of the FBI, has spoken at length of the Communist underground of today. To speak of the Communist underground as a hypothetical contingency of the future is simply to ignore the ground under one's feet.

It has always been said of the Communist Party, by those who know, that its party structure is like an iceberg: one-eighth above the surface and seven-eighths beneath the surface.

And I may add that the above-surface portion may be compared to a periscope through which the torpedoing plotters below observe the target and plan how to destroy it.

To oppose outlawing the Communist Party is to oppose the destroying of the periscope.

I applaud the Attorney General's determination to strengthen the laws against sabotage, espionage, harboring of fugitives, and perjury, but I must point out that the passage of legislation outlawing the Communist Party would in many instances make legislation suggested by the Attorney General unnecessary.

Again we would have the situation of pitting an artillery shell against the atom bomb.

To me it is absolutely inconceivable and fantastic the amount of time the Congress has devoted to considering these hundreds of measures on how to meet the Communist menace when it can be disposed of in one fell swoop by outlawing the Communist Party, and every Communist then is arrested, tried, and if convicted, sent to prison.

What we are seeking to do is to stamp out the Communist criminal conspiracy to destroy our Government, and the most direct way to achieve that end is to declare all Communist organizations illegal and to imprison all Communists.

With all that has been said against outlawing the Communist Party, no one has yet come up with the rational argument as to why we should not completely isolate the enemy that is trying to destroy us.

We fought the Communists in Korea to keep them from hurting us here. This enemy is so powerful, his evil influence so far-reaching, that it has even been recommended we should fight him in the jungles of Indochina so that the tentacles of his conspiratorial malevolence may not crush out our freedoms here in America.

And yet, here in the United States, where we actually see him and know him for what he is, we decide to fight him by writing his name in a registration book.

If all this were written up as a story in Ruritania we would smile at its fictional absurdity, but it has happened here in the most enlightened republic of history.

Incidentally, what will the historians of the future say of these strange happenings?

There is something quite unsatisfactory, and even humiliating about the current approach to the Communist menace in America. It reveals an irresolution, a spirit of timidity and appeasement that is not in consonance with the American character that confronts problems directly and face to face.

Compromising with an evil can only augment and compound the inevitable disaster consequent upon such unvalorous conciliation.

The compromise with the pre-Civil War slavery question had eventually to be wiped away in blood. The compromise at Munich became fuel for the most catastrophic conflagration in history.

There is no compromise with communism. It cannot be approached diagonally. There is only one thing that Communists recognize, and that is a firm position reenforced with power to sustain it. There are not enough leaves in the forests to match in quantity the number of times it has been asserted that Communists are determined to destroy the American way of life.

Why, then, conciliate with the evil doers?

On April 9, Mr. Brownell referred to the 25,000 Communists in the United States as potential foreign agents. Yet, according to his statement before this committee, he would legalize them.

Could anything be more inconsistent?

There are those who speak of 25,000 Communists in the United States as a small number, but 25,000 Communists means 25,000 foreign agents, 25,000 spies.

I was almost amused this morning to hear Mr. Nixon say communism offers no threat, no problem in the United States at all. Then when questioned further, he said, "Of course, there is the question of espionage and sabotage," but that that was no problem.

Twenty-five thousand spies in the United States means 1 for every 6,000 people. We have only 1 FBI agent for every 26,000 Americans.

Furthermore, it must be noted that each 1 of these 25,000 spies must have at least 5 people who, through relationship, persuasion, friendship, or sheer perversion, will do the spies' bidding, so that, instead of 25,000 Soviet agents you have a potential of 125,000 saboteurs.

When I testified in Pittsburgh, Mr. Chairman, I was on the stand for 31 days, and I saw these Communists face to face, and each 1 of them on trial had a coterie of hangers-on with him.

Nelson had his wife beside him all the time, and she had cousins and in-laws, and they all carry forward the same idea that Steve Nelson was promulgating.

One Communist in the wrong place is a menace to national security.

Mr. GRAHAM. Mr. Justice, may I interrupt for a moment?

Justice MUSMANNO. Yes.

Mr. GRAHAM. Just think now, in the testimony of Robert Oppenheimer, he does admit that Steve Nelson visited him very often there in his home in Oakland, Calif.

Justice MUSMANNO. Absolutely, and spoke of the very friendly terms of Steve Nelson with his wife, who, of course, was a Communist, and, incidentally, and not to our credit, was born in Pittsburgh.

One Communist in the wrong place is a menace to national security. It takes only 1 man to blow up a bridge, only 1 auger to sink a ship, only 1 monkeywrench to wreck a machine, only 1 bucket of sand to ruin a dynamo, only 1 Alger Hiss in striped pants to betray America into the hands of her enemies.

I believe that Mr. Brownell's statement before this committee, which statement, of course, was given news coverage throughout the United States, has done and will continue to do the country a great deal of damage because it will give encouragement to the Communist Party and will bring them recruits.

Shortly after I appeared the first time before your marvelous committee, Mr. Chairman, I received a letter from Mrs. Margaret A. Flanagan, of East Santa Cruz, Calif., in which she said that:

> Outlawing the party in California would have a most salutary effect because "they love to tell you that the party is legal in California—therefore their activities are legal."

Mr. Brownell's self-contradictory position on this subject of outlawing the Communist Party is reflected in the statement of William J. Jameson, of Billings, Mont., president of the American Bar Association.

What is the great danger in the statement Mr. Brownell makes? For instance, Mr. Jameson says:

> We must recognize and protect the constitutional rights of all, including Communists, but at the same time we must not be blinded to the fact that if the Communist philosophy should prevail, these constitutional rights would be forever lost.

Using Mr. Jameson's authority and paraphrasing the language, we could say this: the Communist is entitled to use firearms, but if he uses that firearm against us, of course, he may kill us.

The fundamental error in Mr. Jameson's proposition is that he starts off with a wrong premise. He says that we must protect the constitutional rights of the Communists. But the constitutional rights of a Communist do not entitle him to betray the Government, which assures him those same constitutional rights.

The constitutional rights of a man who kills his neighbor in cold blood are to have a trial, in accordance with the guaranties in the Constitution.

It would be absurd to say that the Constitution gives this killer a right to remain at large and continue shooting.

A member of a gang of robbers is entitled to constitutional rights. Those rights include trial by jury, defense counsel, witnesses in his behalf, and opportunity to confront accusing witnesses.

The Constitution does not give him the right to have headquarters, publish a newspaper, and continue to rob.

Every person in the United States has rights under our Constitution, but the Constitution does not give anyone the right to be a Communist any more than it gives him the right to be a murderer.

I do not know how members of this distinguished committee may react to this entire incredulous situation, but I am frank to say that, in my opinion, there is something almost immoral about living in the same constitutional house with an organization that is wedded to a foreign government, devoted to a foreign ideology, and loyal to a foreign conspiracy, whose object and plan is to murder us in our beds and take possession of our homes for the purpose of turning them over to that foreign government, that foreign ideology, and that foreign conspiracy.

We are using an appalling percentage of all of our Government services on this one item of protecting the supposed rights of Communists, bureaus, boards, committees, bill drafters, research men are devoting nights and days to preparing legislation, plans, reviews, superreviews on the subject of special treatment, special hearings, special consideration, delays, privileges, and prerogatives.

And yet what is the essential question of Communists in the United States? It is simply a question for the police and for the courts.

If all other types of criminality in the country were to get the attention accorded to Communists, we would have to have a special branch of the Department of Justice to protect the constitutional rights of kidnapers, a special bureau of the guarding of the rights of counterfeiters, countless investigating committees to see to it that all bandits are assured of fifth amendment privileges.

I repeat, it is a matter for wonderment in the never-never land of fancy.

A few months ago on a visit to New York, I happened to meet up with a group of young American soldiers who had just returned from Korea. They were touring the town and were, of course, greatly impressed with all the wonders that Manhattan has to offer, but there was one thing which bewildered them. They saw in New York a Communist headquarters.

These young men still bore physical and moral scars from battling Communists in Korea; some of their comrades had suffered horrible atrocities at the hands of Communist captors.

The word "Communist" was a word for them to hate. Yet here back in their own home country they saw the word and the deed in Communist headquarters, in Communist newspapers, and in Communist individuals, and it was all legal.

These American soldier boys could not understand it: neither can I.

Every day some domestic turmoil or international disturbance makes American official position on the Communist Party all the more inconsistent, all the more indefensible, and all the more intolerable.

For years Communist agents have been telling the Latin Americans that it is not true that the United States opposes communism. They point out: Is the Commmnist Party not legal in the United States? Does it not have headquarters in the large cities? Does it not openly publish newspapers and magazines? Do not its members have access to the galleries of the Capitol?

Do not representatives of the Red Pravda and Izvestia have the right to enter all our Government departments? Are Communists not allowed to be candidates for President, Senators, and Representatives in Congress?

Who knows how many thousands of honest, but deluded Mexicans, Cubans, and other pan Americans have been recruited into the Communist Party because they have been told that it is proper, honorable, desirable, and even wise to join the Commmnist Party?

"Look at the United States," they have been urged, "the Communists there are untouchable."

Although, concededly, there is some gringoism in Latin America, it must also be admitted that there has also been a profound respect for the United States. That respect has been not only an acknowledgment of the power and the wealth of the United States, but it has had its basic roots, in an appreciation of the truly benevolent spirit that this country has manifested toward all its pan American neighbors.

But that respect is wavering. It can turn into doubt and even disrespect when it is seen that the United States occupies a position which is certainly inconsistent and which seems to be insincere, if not dishonest.

The United States asks Guatemala and all other Latin Americas to drive communism from its shores, but here we give the Communist Party the protection and the respectability of a political party. We say we know it is not a political party, we say we are aware it is a criminal conspiracy, but we do not act that way.

Never did the United States wear two faces. The time has come to tear away the mask of a misguided liberalism which, in the name of democracy, gives to Communists the very means and the weapon to destroy democracy, and which, in the name of the Bill of Rights, invites the Communists to destroy the Bill of Rights.

The time has come to throw away the distorted philosophy of appeasing the Red python coiled at our very doorsteps. The time has come to speak as Americans and act as Americans.

The time has come to call the Communists in America really to account.

The passage of H. R. 8912 will do more to clear the atmosphere as to what the United States means and thus immeasurably further the cause of peace than the landing of a million times more arms and ammunition than the Soviets landed at Puerto Barrios.

Thank you very much.

Mr. GRAHAM. Thank you very much, Justice. We certainly appreciate your statement.

I want to offer you an apology for the peculiar situation in which you have found yourself, with these calls to the floor.

Justice MUSMANNO. I understand that.

Mr. GRAHAM. Before we recess, I will say we will keep the record open until next week, the 7th or 8th, so if you have any additional material to submit, we can insert it into the record.

Justice MUSMANNO. Thank you, Mr. Chairman.

I might also say that keep in mind that to me this is not an imposition; it is a great joy to come here and offer my assistance in any way that I can be of assistance to you.

Mr. GRAHAM. Thank you very much.

As I said when you came in here today, knowing you all these years that I have known you, dating back to 1926, when I was United States attorney in Pittsburgh, and my knowledge of the time you have devoted to this, I think you are one of the best qualified men, not only in America, but in the world, to deal with this subject, and I value your testimony.

Justice MUSMANNO. Thank you. I am glad to hear that.

Mr. GRAHAM. We will recess now, to reconvene subject to call of the Chair. A statement by Representative O'Hara of Illinois will be inserted in the record at this point.

TESTIMONY OF HON. BARRATT O'HARA OF ILLINOIS

Mr. Chairman and members of the committee, I am Barratt O'Hara, representing the Second Congressional District of Illinois. I appreciate the opportunity graciously given me to participate as a witness in the public hearings of your distinguished committee on House Joint Resolution 527 and House Joint Resolution 528.

I have read and studied carefully the two resolutions. I have sought to find in them some suggestion (1) of something necessary to be done in the national security and the public welfare, (2) of something that was not being done under existing laws and instrumentalities, and (3) of something that properly and more efficaciously could be done by vesting despotic power in one man, not chosen by the people in a popular election, but an appointee recommended by service and servility to a political party. I could find no suggestion of anything meeting these three factors.

We have strong laws against treason, sabotage, espionage, criminal subversive acts. We have the FBI, of which we all are proud, and other policing bodies to expose, to run down, and to arrest those in violation. We have a system of good courts to accord to all accused of crime a fair and impartial trial and to mete punishment to the guilty. Moreover we have an alert citizenry, and this includes the responsible labor leadership and labor rank and file of our country.

No free people travel the road to despotism with their eyes open. It is the history of other countries of the world, and within our times of Germany under Hitler and Italy under Mussolini, that the eye opening has come after the end of the road to despotism had been reached and liberty was gone.

What is proposed by these resolutions is to give to one man, the creation of a political party, the arbitrary power of life or death over any labor union, any church, any fraternal, business, or civic organization.

Whether this is something wholesome and to be desired in the climate of our American democracy, or whether it is the siren song of Scylla and Charybdis at the end of the road of despotism, I leave for answer to the Father of His Country, George Washington.

I am quoting now from Washington's Farewell Address:

"The alternate dominion of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetuated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction more able or more fortunate than his competitors turns this disposition to the purposes of his own elevation on the ruins of public liberty.

"Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight), the common and continual mischiefs of

the spirit of party are sufficient to make it the interest and the duty of a wise people to discourage and restrain it."

What Washington feared might come to pass, and against which he warned in the strongest language at his command, was the gradual development of our democracy into a despotism by the concentration of unchecked power in the hands of one man, or a group of men answerable only to themselves or to a political party. He was not referring to the legitimate functions of a political party as an instrumentality through which citizens of kindred philosophies and intellectual and material interests might act in concert in making their voice heard in matters of government. It is clearly apparent that his warning has applicability in the present instance.

Under the guise of serving the national interest it is proposed to vest in the Attorney General an absolute power far and beyond any power that has been given to the judges in our courts.

In my own State of Illinois, and I think elsewhere it is pretty generally the rule, it is mandatory on the judge to grant a petition for a change of venue when accompanied by an affidavit in proper form that affiant has good reason for believing the court to be prejudiced.

Suppose in the case of a labor union or any other organization the Attorney General actually were prejudiced. His prejudice might stem from the participation of such organization in a political campaign in opposition to the candidacy of the source of the Attorney General's appointment. It might stem from anticipation of opposition in a forthcoming campaign upon which was dependent the Attorney General's continued tenure of office. Suppose this prejudice were not merely a matter of suspicion or of conjecture, but also subject to proof by competent evidence, or even openly acknowledged, the Attorney General under these resolutions nevertheless could proceed to pass judgment on one against whom he was known to hold biased and unfriendly feeling.

In the administration of American justice the accused is assumed innocent until guilt is proved beyond a reasonable doubt. He is assured of a fair and impartial trial. The trial judge must be of mind entirely unbiased and without personal interest of any nature in the outcome of the trial. Have we reached such a stage in our national life that we must abandon everything in American justice so dear and sacred to many generations of our people?

I am very sure, Mr. Chairman and my colleagues on the committee, that in the propposal of these resolutions there does exist the danger which George Washington foresaw many long years ago and against which he did all in his power to warn us.

In the 165 years since the establishment of the office we have had 60 attorneys general. We have had good and outstanding attorneys general, some who were thought by some to have been questionable, some who were indifferent. At the best and at the worst it has been an office predominantly political in its character.

When the so-called wiretapping bill was before the House I said in my remarks:

"Does any Member of this body desire to place within the jurisdiction of this essentially political office the power to say who shall be permitted to talk in privacy with his own wife and his own children over a telephone line for which he has contracted and for which he pays?"

The House in its wisdom refused to give the Office of the Attorney General such arbitrary and unchecked power. The attitude of the American people supportive of the position of the House was reflected in editorials in the newspapers of the United States, from coast to coast.

Now it is proposed to give to this essentially political office the power of life and death over every labor union, every church, every fraternal organization. It is a grab for political power, bypassing our courts and our time-honored customs, that in its boldness stands without precedence in our national history.

The passage of these resolutions would be the establishment of a precedent which, again quoting the words of Washington, "must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

As to the proposition here presented of one man, entrenched in a political office by virtue of his service in active politics, being vested with such large and despotic powers, George Washington's counsel in opposition is as crystal clear as the ringing of a bell. Against such a proposition he would say, as in his famous Farewell Address:

"A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position."

Mr. Chairman, I have profound respect for the great Judiciary Committee of the House, composed as it is of Members whose eminence on the bench and at the bar before their election to this body was long established and recognized. I appreciate sincerely the courtesy and the honor you have shown me by listening to my remarks. I feel so deeply on the subject we are discussing because it seems to me to strike at the very spirit and purpose of our Government. I hope that the committee in its wisdom will render another great service to our democracy by turning thumbs down on a proposal to place above the law the power of one man, however wise and well-motivated that man might be.

(The following statements were received after the conclusion of public hearings:)

AMERICAN CIVIL LIBERTIES UNION,
Washington, D. C., July 8, 1954.

WALTER M. BESTERMAN,
House Judiciary Committee,
United States Capitol, Washington, D. C.

MY DEAR MR. BESTERMAN: In accordance with our telephone conversation of early this week, I am attaching herewith a statement of the American Civil Liberties Union on House Joint Resolution 527 and House Joint Resolution 528, which I would appreciate your making part of the record.

Very truly yours,

IRVING FERMAN, *Director.*

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION ON HOUSE JOINT RESOLUTION 527 AND HOUSE JOINT RESOLUTION 528, TO PROVIDE (RESPECTIVELY) FOR ELIMINATION OF SUSPECTED SECURITY RISKS FROM DEFENSE AND RELATED INDUSTRIES, AND FOR DISSOLUTION OF COMMUNIST-INFILTRATED UNIONS IN SUCH INDUSTRIES

The American Civil Liberties Union, a nonpartisan national organization devoted solely to defense of the Bill of Rights, appears before this committee to testify on House Joint Resolution 527 and House Joint Resolution 528, measures proposed by the administration to deal with the problem of Communist-dominated unions in defense and related industries and suspected security risks employed in defense facilities.

The union shares with other Americans the desire to keep our Nation secure from the threat of Communist dictatorship. As an organization dedicated to the preservation of civil liberties, we know the incompatibility of democratic liberties and Communist totalitarian rules. We recognize how communism seeks to extinguish human liberty wherever it flourishes. But because we believe that the principles of human freedom, incorporated in our Bill of Rights, which comprise the moral base of our democracy, are a far greater force than Communist ideology, we must strive to maintain these principles, to keep them alive, not only in the history books of schoolchildren, but in the everyday action of Government and its citizens.

The problem of drawing the fine line between security and freedom is a difficult one, but we believe that it can be done, through the application of intelligence, experience, and a sincere regard for the fundamental concepts on which our country is founded. It is in this spirit that we respectfully urge the committee's consideration of our views.

House Joint Resolution 527, the administration's proposal introduced by Mr. Reed, would deal with the elimination of suspected security risks from employment in defense facilities. In furtherance of our single objective, the defense of civil liberties, the American Civil Liberties Union recognizes that the reality of the threat of Communist totalitarianism may necessitate nonemployment in sensitive positions of those persons who, by virtue of their devotion to the Communist cause, and their employment in such positions, represent a real danger to national security. In making this accommodation between freedom and security, we stress that the definition of a sensitive position and a security risk should be exactly drawn. This was done by the A.C.L.U. with respect to the personnel security program involving persons working in defense contracts in private industry. We offered no objection to screening out possible security risks who would otherwise have access to classified information or materials while working on such contracts. We have no serious quarrel with the standards utilized in this program, although we have had some objections to the procedure. But the legislation proposed by House Joint Resolution 527 goes much further. It would cover many positions which are not sensitive and might apply improper

standards. We also are gravely concerned over the procedures set forth therein for determining a security risk. We fear they are not wholly in accordance with our traditional canons of due process.

House Joint Resolution 528, also introduced by Mr. Reed, embodies the administration's proposals for the elimination of Communist-infiltrated unions from defense and related industries. Because of the direct relationship of sensitive defense industries to the national security, and only because of such direct relationship, the A.C.L.U. agrees that there may be justification for curbs on Communist-dominated unions in these areas to cut down the danger of espionage and Communist-designed strikes to impede production. We are fully aware of the nature and extent of the Communist conspiracy, and we annex herewith a statement of our board of directors, adopted March 15, 1954, reaffirming our position in this regard. But we believe that any legislation dealing with this problem must be carefully drafted to preserve the letter and spirit of due process and result in the least possible invasion of freedom. House Joint Resolution 528, designed to deal with these problems, does not in our opinion meet these two tests, for its coverage is too sweeping and its standards too vague.

I. HOUSE JOINT RESOLUTION 527

This bill, upon a finding of danger to the security of the United States, gives the President the power to issue such laws and regulations as may be necessary to bar from access from any defense facility individuals as to whom there is reasonable ground to believe that they may engage in sabotage, espionage or other subversive acts. However, the law does not provide any guide as to what positions must be treated in this manner, to establish what persons, by virtue of employment in a sensitive position, would be able to seriously affect the security of the United States. Certainly there can be no criticism of programs aimed at eliminating security risks from access to classified information or materials, or the Coast Guard security program aimed at eliminating merchant seamen who may be security risks from vessels of the United States, where they might thus be in a position to really endanger the security of the United States by virtue of their employment. But House Joint Resolution 527 makes no attempt to confine loyalty investigations to the areas where they are actually necessary. Since the Government's certification of a person's loyalty as a condition to his employment would result in widespread investigations into beliefs and associations, it should be confined to positions where there is a relationship to security. Even under the pressures of security, the intrusion into an area of activity and beliefs protected by the first amendment to the United States Constitution should be as limited as possible.

The importance of defining, as exactly as possible, sensitive positions affected, is made more emphatic by the bill's failure to specify what defense industries are covered. By its terms it would apply to any "defense facility," which would have the same meaning as given in title 1 of the Internal Security Act of 1950, though the Coast Guard security program is left to operate by itself on the waterfront. But the definition in title 1 permits the Secretary of Defense to designate any industrial facility a "defense facility," if he finds it necessary to security (sec. 5 (b)). Thus, there is no effective limitation whatsoever on the scope of this bill. As stated above, because of the first amendment issues involved in this problem, every effort should be made to limit the coverage of this bill.

Assuming that a definition was made so as to cover only genuinely sensitive positions, it would be appropriate to bar persons as to whom there is reasonable ground to believe they may engage in sabotage and espionage. But we do not know what is meant by the language which would bar those who might engage in other subversive acts. We frankly do not know what this language is intended to cover. Such language is so vague as to lead possibly to all kinds of arbitrary decisions, and make this provision unnecessary and perhaps dangerous.

The bill also fails to state just who is to determine whether or not security clearance should be granted. Under the present personnel security program, clearances are determined by the Government for persons having access to classified information and material which is classified higher than confidential. Where clearances are required for data classified as confidential or lower, private employers make the determination of whether or not a person should be granted a security clearance. The investigations by private employers have often been done by private agencies, such as Dun & Bradstreet and the Retail Credit Co. Certainly these organizations are in a poor position to genuinely protect the national security by determining clearances. They do not have access to FBI

files or information from other investigative agencies, which may reveal much information about employees which private agencies could never learn. Moreover, the few reports we have seen of one agency engaged in this business, indicate that there is a definite liability to distinguish between the nonconformist and the subversive, between the tactics of socialism and communism. (In view of the recent debate over the problem of clearing investigators for a certain Senate committee, it seems appropriate to point out that these private investigators are not cleared by Government agencies, nor do they have special training for their sensitive work.) The individual who is under investigation and may be deprived of employment may have no opportunity to answer any charges the investigation produces. This lack of a hearing is harmful, not only to the individual, but to the Government, for without the forum in which charges can be fully heard, a qualified, needed worker may be dismissed. It should be made clear that Government and Government alone is responsible for the clearance.

The bill would set up only the barest outline of fair procedures, and even these do not seem to accord full protection of due process of law. While the individual would receive notice of the charges and the opportunity to answer them, the provision that the Administrative Procedure Act, an excellent law guaranty, shall not be applicable to the proceedings seems indefensible. There is no requirement that a written transcript should be provided the worker, or that he is entitled to the protection of the right to counsel. There is no opportunity given to cross-examine most informants against him. The Supreme Court's 4–4 decision in the Bailey case leaves open the question of whether the Constitution requires that the right of cross-examination be given to Government employees who are suspected of being loyalty risks. (*Bailey* v. *Richardson*, 341 U. S. 918.) It may be argued that denial of cross-examination to Government employees may be theoretically possible on the ground that working for the Government is a privilege. But the right to earn a living is hardly a privilege which may be denied at will, and the licensing of people in private industry, which would be set up by this bill, cannot possibly be denied without giving these persons the essential right of a fair defense, cross-examination, and confrontation.

The constitutional protection of a full statement of charges is not met. Section 1 (b) would require only that the worker be given a "fair summary of the information," at least where confidential informants are the source of the information, and otherwise it is only required that charges be "sufficiently specific to permit the individual to respond." Such vagueness will certainly handicap an individual's defense. Moreover, it has been held by the courts that the Constitution requires that specific charges be given against an individual in complete detail before he can be barred from private industry, even in security cases (*U. S.* v. *Gray*, 207 F. 2d 37).

Other due process abuses are possible under the bill. There may be "reasonable continuances of hearings," but apparently this is available to the Government as well as to the individual; the danger here is that the Government might well delay hearings inordinately, while there would be absolutely no recourse by the employee to compel a prompt hearing. There is no requirement that specific findings of fact be made by the agency making the final determination as to the employee's status, nor any requirement that it make a written transcript and provide a copy thereof to the employee. There is no appropriate procedure to insure that uniform criteria be applied to all persons throughout the country through a central review procedure, so as to assure equal treatment and protection for all employees. There is no requirement that the hearings be held at a place reasonably near the home of the employee. While we realize that the President's order under this bill might identify out fair procedures, we believe that the law itself should clearly and carefully spell these protections.

The provisions of section 4, making it a criminal offense to knowingly obstruct or interfere with the exercise of any power conferred by this law, seems to us unwarranted and dangerous. Since the bill would punish only willful violation of any rule, regulation, or order issued under the law, it is difficult to understand what the language in reference to obstruction and interference means. Is one who brings a test case of the law or its procedures thereof guilty of a violation of section 4, since he might be knowingly interfering with the exercise of powers under the law? Is any person who protests against the law guilty of a criminal offense? We are sure that the administration does not intend these results to follow, but we cannot conceive of any other conduct which this language would make punishable. It thus stands as a threat to freedom of expression and a deterrent to the bringing of court cases that therefore should be struck down.

II. HOUSE JOINT RESOLUTION 528

This bill, whose purpose is "to provide for the dissolution of Communist-infiltrated organizations," would have Congress adopt a finding that the Communist Party[1] or its members have infiltrated or come into control of legitimate organizations which are in a position to affect national defense or security, and that such infiltration or control presents a clear and present danger.

The Communist-infiltrated organizations which this bill would dissolve are defined as being any organization, other than the Communist Party or a Communist-front organization, which "(A) is substantially directed, dominated, or controlled by a Communist-action organization or by a member or members thereof; and (B) is in a position to affect adversely the national defense or security of the United States" (sec. 1). Procedures are set up pursuant to which the Attorney General may bring such organizations before the Subversive Activities Control Board, which would hold public hearings to determine whether the organization is of the proscribed class, and order it dissolved if the finding is affirmative (secs. 2, 3). Though the order can be reviewed in the courts, prior to such review, the Board may oust any of the union's leaders (sec. 3 (c)). Once the dissolution order becomes final—which is after court review—the organization concerned has no collective-bargaining rights. The bill would also repeal the loyalty oath presently required of labor leaders by section 9 (h) of the Taft-Hartley Act.

1. Loose definitions

(*a*) Apparently this bill is not designed to reach organizations which are under the domination of the Communist Party or its members to such an extent that they may be termed Communist-front organizations, for by definition in section 1, a Communist-front organization is not a Communist-infiltrated organization. Thus many organizations which are not Communist fronts, a vast majority of whose membership and leadership may be totally hostile to communism, may be dissolved pursuant to this legislation. Even if the Congress finds that the danger is sufficient in some defense industries to require that Communist elements must be removed from a labor union, the unbridled power given to the SACB to dissolve an organization, without using less drastic remedies that may be available—ousting of specific Communist leaders—would sanction a cure which is entirely disproportionate to the evil, and which, by the threat it poses to a union which is not a Communist front, may serve to quite improperly hinder legitimate labor activity.

The danger of such loose definitions as "infiltrated" was well described by the American Federation of Labor in a publication of the AFL's Labor League for Political Education on June 11, 1954. The AFL said: " 'Communist-infiltrated' is a new concept. It does not mean Communist front or Communist dominated. It just means having one or more employees on the payroll who might be adjudged by very loose standards to be security risks. If the Board decided the business or union is 'infiltrated' then it would order the complete liquidation of that business or union.

"Is this the reward which American business and American labor get for doing the best job in the world in upholding that private-enterprise system and doing the best job in the world in upholding the private-enterprise system and as freemen—not as citizens of a police state.

"Fortunately farsighted businessmen are concerned also. The conservative Wall Street Journal denounced the bill in a 2-column editorial on June 1, 1954, in these words: 'Indeed it would have been most difficult to make reference to the Bill of Rights and then attempt to do what this measure suggests * * * it is not the part of wisdom ourselves to chip away at the very rights we seek to save from that menace.' "

We should add that opposition to these bills come not only from the AFL side of labor. The CIO has, with equal firmness, spoken out against the legislation symbolized in the Reed bill.

A Communist-infiltrated organization is defined as one which is "substantially directed, dominated, or controlled by a Communist-action organization or by a member or members thereof." The use of the word "substantially" troubles us. At what point does substantial control begin? Is less than 51 percent voting control substantial control? Apparently it is, since infiltration is the test, not

---

[1] The bill uses the term "Communist-action organization" as defined in the Subversive Activities Control Act of 1950 (sec. 1), which definition is clearly meant to apply only to the Communist Party and its subdivisions.

whether the group is a Communist front. If not, what proportion? Should not the word "substantially" be eliminated altogether and the issue focus on the question of whether, in fact, the organization is dominated, directed, or controlled by the Communist Party or by its members?

The second condition which must be fulfilled before an organization can be dissolved is that it must be "in a position to affect adversely the national defense or security of the United States." This, too, is vague language, which could lead to serious attacks on labor organizations if applied by persons hostile to labor. It cannot be assumed that the use of such broad language is meant to reach only defense plants. With such wide scope, it would be difficult to imagine any union or organization which could not be brought within the compass of this legislation—for almost every organization might be considered in a position to affect the national defense or security of the United States. A union of farm laborers, a union of restaurant employees, a labor organization of clothing garment workers, indeed any union engaged in the production of any agricultural or industrial commodity might be affected by the bill. In these days of necessary total mobilization, almost any product or commodity plays some part in national defense or security. Thus, virtually every union—not merely those engaged in defense work—may come within the terms of this bill. In addition, Communist-infiltrated organizations are not defined in terms of labor unions solely. Any other organization might be affected by the bill. For example, under the present loose definition, an organization set up for the legal defense of pacifists might be dissolved by the terms of this bill, if Communist-infiltrated, on the theory that by helping those who object to the draft it might adversely affect the national security of the United States. The same might apply to organizations dealing with other aspects of American life, such as groups concerned with the problem of aliens, or even of civil rights, if they be found to be Communist infiltrated. Thus, this bill would place in the hands of the Federal Government the power to dissolve almost every organization which plays a significant role in American life, even where the particular danger presented by the particular organization is neither so clear nor so present as to warrant the invasion of the right to freedom of association under the first amendment to the United States Constitution.

Section 2 (d) gives additional standards to determine whether an organization is Communist infiltrated. Subsection 1 further confuses the issue by requiring the Board to take into consideration the extent to which Communist Party members are active in management or direction—without requiring any particular degree of such control. Thus, the Board, under these loose criteria, might consider an organization Communist infiltrated if only a small portion of its control or managerial personnel are Communist, provided the other conditions of the subsection are met. And the other conditions are vague, too. They include the extent to which the group promotes the objectives of the Communist Party—but how many of the objectives of the party must it promote? Must these be the real objectives of the Communist Party, or is it sufficient if the organization promotes the good objectives to which the Communist Party so hypocritically pays lip service, such as nondiscrimination, civil rights, peace? The test of nondeviation from the Communist Party line of subsection 3 presents similar difficulties for while unswerving adherence to the party line might be a proper test, an organization might well agree on certain policies with the Communists, within the particular confines of the group's interests, and still not be truly a Communist organization. The fourth subsection, which permits the Board to consider the extent to which the organization "is in a position to impair the effective mobilization or use of economic resources of manpower in connection with the defense or security of the United States," lends added weight to the objections we have raised above, to the effect that this bill may encompass many more organizations than are truly engaged in defense work, and may encompass many organizations which are not labor unions. Even a newspaper, which by opposition to a war, might well impair effective mobilization, might be dissolved pursuant to this section. It may sound ludicrous, but since many newspapers of unimpeachable integrity from the New York Times to the Washington Post have been characterized as pro-Communist by Senator McCarthy, conceivably a Board, which is held accountable to the legislature for its funds, might well be under improper pressure to dissolve such newspapers. Legislation so loosely drawn as to permit the contemplation of such results is certainly dangerous.

(*b*) The legislation is very vague in another respect. While it provides that "nothing in this act shall be held to make the provisions of the Administrative

Procedure Act inapplicable" (sec. 5), this negative language makes it unclear as to whether or not the provisions of that act are indeed applicable. We believe that the legislature should make it entirely clear that the procedures of the Administrative Procedures Act are available to all organizations affected by this law, for that act does help to provide fair procedures.

2. Improper procedures

(*a*) The provision that obstructive behavior by a party before the SACB may result in the denial of a fair hearing to that party is entirely unwarranted (sec. 2 (c) (2)). Certainly we would have no objection whatsoever to a provision authorizing the Board to protect itself against obstructive misbehavior through use of the contempt power, since we recognize how such hearings may be used as propaganda sounding boards. But this bill, as presently written, would permit the exclusion of an organization on trial from further participation in a hearing if it is guilty of obstructive misbehavior (no matter how minor). Thus, one bit of objectionable misbehavior and the organization may be penalized by being prevented from presenting its case. The penalty for such obstructive misbehavior may be branding as a Communist-infiltrated organization and complete dissolution of the organization, even though the hearing may well have shown that such results may be entirely unjust, had the organization been permitted to present its case. This provision in the bill is, so far as we are aware, completely unprecedented—and certainly unjustified. It might make for such a deprivation of the right to a fair hearing as to amount to a violation of due process of law.

(*b*) The McCarran Subversive Activities Control Act of 1950 carefully provided that none of its provisions in regard to Communist organization would come into operation until the order of the Board finding the organization to be Communist had become final, after all procedures for judicial review had expired. However, this bill would, in effect, permit dissolution of any organization before court review. For while dissolution orders would not become final until after the judicial review, the Board has the power "to issue such orders as it may determine to be appropriate prohibiting any individual or individuals from acting as officers or representatives or exercising substantial administrative or policymaking functions." It should be noted that there are absolutely no standards pursuant to which the Board is instructed to determine when the ouster of officials is appropriate. The Board thus is given sweeping power to oust the entire leadership of the organization, even before judicial review takes place. It is obvious that a union can be entirely destroyed in this fashion. Confidence lost in union leadership by such an ouster could possibly never be repaired, even if the order of the Board finding the organization to be Communist-infiltrated was later reversed by the courts. And since court review may literally take several years, obviously an organization without leadership of its own choice would flounder and decay before it had judicial review. It seems to us that this is certainly a violation of the spirit if not the letter of due process of law, for it permits the organization to be destroyed before it has had its day in court to prove its innocence.

ENGINEERS AND SCIENTISTS OF AMERICA,
Minneapolis, Minn., July 8, 1954.

Re House Joint Resolution 527

Hon. LOUIS E. GRAHAM,
Chairman, Subcommittee No. 1 of the House Judiciary Committee,
Senate Office Building, Washington 25, D. C.

DEAR MR. GRAHAM: I respectfully request you to accept the following and the enclosure as a statement for the record in the hearings currently being held on House Joint Resolution 527. This statement is filed on behalf of the Engineers and Scientists of America, of which I have the honor to be president.

The Engineers and Scientists of America is a national federation of collective-bargaining groups of engineering and scientific employees, encompassing units with a total in excess of 40,000 employees. These employees are in diversified activities such as research and development of electronics, aircraft, and chemicals in private industry, largely under Government contracts, and civil and mechanical engineering employees of the Federal, State, and municipal governments.

The Engineers and Scientists of America is seriously concerned about the adequacy of the programs addressed to the security of the United States. We are desirous of taking or furthering every step which will add to that security.

Specifically, we are concerned lest the deficiencies in the existing security program will cause employment in defense industries to become unattractive to engineers and scientists. This will aggravate existing shortages of personnel in critical defense work.

We are confident that you recognize the importance of establishing the foundation for a belief by all persons coming under the scrutiny of an industrial security program that the procedures and findings will be fair and equitable. Total security requires the employment of all capable brain power possessed by persons who are not in fact either security risks or disloyal.

We submit for your careful consideration the importance of retaining those concepts of the administration of justice commonly designated as "due process of law," which arise largely from the provisions of the sixth amendment to the Constitution. We respectfully submit additional procedural safeguards, which we believe should be incorporated in any enactment, for the consideration and evaluation of your subcommittee. Our suggestions are detailed in the enclosed resolution.

Without meaning to burden your subcommittee, we specifically point out the limitation to recoupment of loss of earnings, when an individual has ultimately obtained clearance (H. J. Res. 527, p. 4, lines 8 through 13). We earnestly request that you consider that employees must presently advance considerable funds in preparing and presenting a defense. Does not justice require reimbursement when clearance is obtained?

Presently only three industrial personnel security clearance appeal boards exist, i. e., New York, Chicago, and San Francisco. Recently, one of our members obtained such clearance from the San Francisco appeal board. Preparation of his appeal and appearance necessitating travel by his witnesses and himself from his location in Seattle, Wash., required essential expenditures exceeding $1,200. Having obtained clearance, it would appear equitable to permit him to recoup reasonable expenditures for the preparation of his defense, particularly since much of the expense was due to the remote situs of the appeal board. In this connection, we also suggest the possibility of a provision for a local preliminary hearing which might obviate the need for further proceedings in many cases.

We wish to emphasize that our concern is limited to those persons worthy of obtaining ultimate clearance and who do obtain it. Our purpose is solely to provide adequate relief for those already covered by the bill. We submit this is the spirit of the bill.

Respectfully yours,

JOSEPH AMANN, *President.*

RESOLUTION

Whereas the member units of the Engineers and Scientists of America, collectively and individually have declared and hereby reaffirm their adherence to and unqualified belief in the form of democracy presently existent in the United States of America, including all the principles of Government and individual liberty enunciated in the Constitution; and

Whereas we, collectively and individually, recognize and abhor the existing threat of communism or of any organization, association, movement, group, or combination of persons which advocates the alteration of the form of government of the United States by force or violence, to our way of life, our form of government, and the peaceful desires of American citizenry generally; and

Whereas engineers and scientists, individually and collectively, are of prime importance to our country's welfare, security, and defense; and

Whereas the training and experience of engineers and scientists has in many instances been confined to defense endeavors; and

Whereas the implementation of measures to protect the national defense will deprive in many cases the ability of the individuals above enumerated to earn a livelihood; and

Whereas we recognize the need for an adequate industrial security program to eliminate the possibility of subversives or other security risks obtaining classified security information related either to our security or our defense effort; and

Whereas the procedural safeguards set forth below should be made generally applicable as a matter of essential fairness but they become even more important in the case of engineers and scientists whose special talents and attributes are so vitally needed to assure the security of the Nation; and

Whereas it is recognized that the existing program is fairly conceived, nevertheless it is desirable to modify those features of the procedures of the security program which might reasonably bring into question its basic fairness or effectiveness; and

Whereas the Engineers and Scientists of America believe that the carrying out of the industrial security program and simultaneous maintenance of the constitutional safeguards, essential to our way of life, require certain amendments to the existing security program: Now, therefore, be it

Resolved, That the following modifications in the existing industrial security program be, and they are hereby, recommended by the Engineers and Scientists of America for the careful examination and consideration of the executive and legislative departments of the Government of the United States:

1. Except in instances where Government regulations otherwise provide because of acts of subversion, subversive activity, membership in the Communist Party or Communist-front organizations, or knowledge of contributions to either or other action which indicates knowledge of aiding or abetting any of the foregoing, suspension of clearance should issue only after some form of preliminary Government hearing and a determination equivalent to "a reasonable cause to believe" that failure to suspend would jeopardize security.

2. The preliminary hearing, and hearing on the merits, should be reasonably near the place of employment.

3. Previous to a hearing on the merits, the individual involved (accused) should be provided a bill of particulars sufficiently specific that he will have knowledge of the time, place, activities, and associates or associations which are the basis of a charge that he is a security risk.

4. The individual involved (accused) should have the right to hear the testimony of adverse witnesses and be afforded an opportunity to cross-examine them. Opportunity to test the credibility of witnesses must be retained as one of the foundation stones of our system of justice, recognizing nevertheless that it may be essential to exclude individuals employed by the Government as intelligence agents.

5. The accused shall be furnished copies of the action of the tribunal, and any appeal tribunal, which will be in the form of a written opinion which sets forth those findings of fact and conclusions of law upon which the final decision is predicated.

6. In those instances where the defendant is cleared, he should be entitled to recover his reasonable expense for his defense, including (*a*) witness, stenographic, and other appropriate fees, and (*b*) a reasonable amount for counsel fee.

7. The rule against double jeopardy should apply except in those instances where additional new material, other than corroborative, is obtained, or where a reopening is predicated upon subsequent events or activities; be it further

Resolved, That copies of this resolution shall be forwarded to the President of the United States, the Director of the Office of Defense Mobilization, the Secretary of Defense, the Secretary of Labor, the chairman and ranking minority member of the Armed Services Committee of the United States Senate, the chairman and ranking minority member of the Armed Services Committee of the House of Representatives, and the Director of the National Science Foundation.

I certify that the above resolution was adopted at the Second Annual Convention of the Engineers and Scientists of America, held in the city of New York, April 22–25, 1954.

ORVILLE J. UNDERWOOD, *Secretary.*

(Thereupon, at 3:20 p. m., the subcommittee was recessed, to reconvene subject to the call of the Chair.)

×